POLITICAL LAW — PART TWO

THE LAW OF PUBLIC OFFICERS AND ADMINISTRATIVE LAW

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PUBLIC OFFICERS AND CIVIL SERVICE LAW

The law governing public officers and the civil service deals with the prosaic and closely regulated affairs of government employment. Considering the extent of public employment in the Philippines, it is an important branch of law, but it continues to be the unglamorous part of political law seldom yielding earthshaking or headline-grabbing judicial pronouncements.

1968 was no exception. In the current concern and preoccupation with graft and corruption in government, a Court pronouncement on the underlying philosophies of public office would have been edifying. However, the only 1968 cases dealing directly with the nature of public office involved an introductory statement in a case involving the constitutionality of the Anti-Graft and Corrupt Practices Act and a decision on the mundane issue of back salaries.

I. Nature of Public Office

As a public official, the petitioner in *Morfe v. Mutuc*[1] felt that certain provisions of the Anti-Graft and Corrupt Practices Act infringed upon his constitutional rights. In upholding the validity of the statute, the Court started with an obiter defining the nature of public office, stating that the law was enacted to deter public officials and employees from committing acts of dishonesty and to improve the tone of morality in the public service. The court declared the statute to be an expression of state policy in line with the principle that a public office is a public trust. It is aimed at repressing certain acts of public officers and private persons alike which constitute graft and corrupt practices or which may lead thereto—grave problems in the public service which unfortunately have afflicted the Philippines in the post-war era.

Public office is not, strictly speaking, a property right nor a grant or contract or obligation which cannot be impaired but a public agency or trust. There is no such thing as a vested interest or an estate in

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[1] G.R. No. 20387, January 31, 1968, 64 O.G. 8835 (Aug., 1968). See discussion in Political Law — Part I.

office or even an absolute right to hold office. Public offices are created for the purpose of effecting the end for which government has been instituted which is the common good, and not for the profit, honor, or private interest of any one man, family, or class of men.[2]

In *Santos v. Secretary of Labor*,[3] the Supreme Court had occasion to reiterate the nature of a public office as a public trust and not a property right which passes to one's heirs. Where the petitioner, who contested the promotion of one of the respondents, died before the case could be tried on its merits, the Court held that none of the heirs may replace him in that position. The estate of the deceased public officer may not press the claim that he be allowed to continue holding office as Labor Conciliator II. *Actio personalis moritur cum persona.* However, since the jurisdiction of the court had attached before the death of the petitioner, it continued until the termination of the suit. It is true that what was left was a money claim for salary differentals, but death did not dislodge jurisdiction on that money claim. The estate of the deceased could be substituted in the proceedings on the unextinguished money claim.

II. ELIGIBILITY

A. *Next-in-rank*

A significant and far-reaching provision of the Civil Service Act states that whenever a vacancy occurs in any competitive or classified position in the government or in any government-owned or controlled corporation or entity, the one next in rank who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility shall be promoted thereto.[4] The Revised Civil Service Rules requires each department or agency to prepare a clear system of ranking positions for purposes of promotons.[5] There is, however, no uniform understanding in the government service as to whether rankings should be department-wide, bureau-wide, division-wide, section-wide, or unit-wide.[6] In fact, most public officers and employees equate next-in-rank with seniority and fail to realize when competence and qualifications should come in as criteria for promotions.

We now have the *Reyes v. Abeleda*[7] decision which holds that in the Bureau of Public Schools, as between an Acting Budget Officer III of the

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[2] Segovia v. Noel, 47 Phil. 543 (1925); Brown v. Russell, 43 N.E. 1005 (1896); Fergus v. Russell, 110 N.E. 130 (1915).

[3] G.R. No. 21624, February 27, 1968.

[4] Rep. Act No. 2260, (1959), sec. 23.

[5] Revised Civil Service Rules, Rule VII, secs. 3-6.

[6] The rule that the determination should provide for as wide an area of selection as possible permits varying interpretations. How wide is possibly wide?

[7] G.R. No. 25491, February 27, 1968.

School Finance Division and a Budget Officer III of the Medical and Dental Services, the latter is next-in-rank to a Budget Officer IV vacancy in the former's division.

The petitioner based his losing petition on his being in the Division where the vacancy occurred. The Court did not clearly declare that next-in-rank positions in a Bureau may cut across divisional lines because the case was decided mainly on the petitioner's being an *Acting* Budget Officer III as against the respondent's being a Budget Officer III. It is significant, however, that the following dictum was delivered —

> "The law does not impose a rigid or mechanistic formula on the appointing power, compliance with which is inexorable and deviation therefrom fatal. Far from it. If there be adherence to the concept that public office is a public trust, as there ought to be, the criterion should be what public welfare demands, what satisfies public interest. For it is axiomatic, that public needs could best be attended to by officials, about whose competence and ability there is no question. Discretion, if not plenary, at least sufficient should thus be granted to those entrusted with the responsibility of administering the officers concerned, primarily the department heads. They are in the most favorable position to determine who can best fulfill the functions of the office thus vacated. Unless therefore, the law speaks in the most mandatory and peremptory tone, considering all the circumstances, there should be, as there has been, full recognition of the wide scope of such discretionary authority."

The Court also added that even if both petitioner and respondent are under equal circumstances, the former is less senior by one month than the latter. From this statement on seniority, can we gather that "organizational unit" under the Revised Civil Service Rules should mean an entire Bureau, even one as huge as the Bureau of Public Schools?[8]

B. *Qualified voter — effect of pardon*

Following the old *Pelobello v. Patiño*[9] rule, the quo warranto petition in the case of *Lacuna v. Abes*[10] against an ineligible mayor was dismissed after an absolute and unconditional pardon restored full civil and political rights. The pardon was extended on the same day that the Court of First Instance was to hear the petition.

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[8] Rule VII, sec. 6 states "Whenever there are two or more persons who are next in rank, preference shall be given to the officer or employee who is the most competent and qualified and who has the appropriate civil service eligibility: *Provided*, That when their comparative degree of competence and qualification are equal, preference shall be given to the qualified officer or employee in the organizational unit where the vacancy occurs: *And provided, further*, That when all foregoing conditions have been taken into account, and the officers or employees next in rank are still under equal circumstances, preference shall be given to seniority."

[9] 72 Phil. 441 (1941); Cristobal v. Labrador, 71 Phil. 34 (1940); Mijares v. Custorio, 73 Phil. 507 (1941).

[10] G.R. No. 28613, August 27, 1968.

The petitioner tried to do some hair-splitting and argued that the respondent was not a qualified voter at the time of election because the Election Registration Board had earlier denied his application for registration. The Supreme Court reiterated the *Rocha* ruling that registration as a voter is not a qualification within the meaning of "qualified voter" as it is merely a step towards voting.[11]

The hair-splitting was based on the argument that the *Rocha* ruling was in favor of a candidate *who was qualified* but who simply forgot or failed to register. In this case, Abes could not register because, as the Supreme Court itself stated, he was, at the time of the election, not qualified to vote or be voted for, or to hold public office.[12] However, the Court pointed out that this non-registration was predicated upon the same disqualifying effects of the previous conviction that were blotted out by the plenary pardon. Thus, a candidate who was correctly denied registration because he was not qualified during registration and election time became qualified because the post-election pardon reached out retroactively.

C. *Qualifying Examination*

The Civil Service Law requires qualification in an appropriate examination for appointment to positions in the competitive or classified service.[13] In *Del Rosario v. Subido,*[14] the Supreme Court stressed the significance of the word "appropriate." Petitioners who passed civil service examinations for patrolman claimed eligibility for permanent appointments as police chief or police lieutenant. They relied on section 2266 of the Revised Administrative Code which requires "at least one qualifying examination" for admission to the police service to be held every year in each province. The Court sustained the authority of the Civil Service Commisioner to prescribe special examinations for police chief distinct from examinations for patrolman and examinations for police lieutenants. "At least one examination" was interpreted to mean "at least one" but not "only one" examination for the various positions in the police service.

D. *Educational requirements*

Is a person who has served as captain in the Manila Police Department for at least three years but who does not possess a bachelor's

[11] Rocha v. Cordis, 103 Phil. 327 (1958).

[12] The penalty of *prisión mayor* for counterfeiting treasury warrants carried the accessory penalty of perpetual special disqualification from the right of suffrage. (Rev. Pen. Code, Art. 42) Section 99 of the Revised Election Code also disqualified him from voting.

[13] Civil Service Law, sec. 23. In this regard, it may be pointed out that the old and general eligibilities of first grade, second grade, and third grade are on their way out. Examinations are now given for specific positions such as patrolman, chief of police, teacher, superintendent, supervisor, personnel officer, stenographer, auditor, economist, public relations officers, etc.

[14] G.R. No. 23934, July 25, 1968.

degree, qualified for appointment as chief of police under section 10 of the Police Act of 1966 (Republic Act No. 4864) which reads as follows:

> *"Minimum qualification for appointment as Chief of Police Agency.* — No person may be appointed chief of a city police agency unless he holds a bachelor's degree from a recognized institution of learning and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation, or has served as Chief of Police with exemplary record, or has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; or any high school graduate who has served as officer in the Armed Forces for at least eight years with the rank of captain or higher."

The Court answered in the case of *Morales v. Subido,*[15] that he is not qualified because the meaning and intendment of the law call for both educational and service qualifications. Thus, the phrase "has served as chief of police with exemplary record" and the phrase "has served in the police department of any city with the rank of captain or its equivalent therein for at least three years" are not to be read separately from the requirement that he should hold a bachelor's degree.

Two kinds of educational qualifications are, therefore, sufficient. A bachelor's degree holder with the various kinds of service stated above or a high school graduate, who for at least eight years has been a captain or higher in the Armed Forces may be appointed chief of police.

The Court also distinguished between eligibility and qualification. It pointed out that the Police Act allows the compensation of service for a person's lack of eligibility but not necessarily for his lack of educational qualification.[16] It further stated that the Police Act gives credit for service and allows it to compensate for the lack of civil service eligibility in the case of a member of a police agency but it gives no such credit for lack of educational qualification.

E. *Power of the commissioner to prescribe qualifications*

The *Villegas v. Subido*[17] decision reminds us that it is Congress and not the Commissioner of Civil Service who prescribes qualifications for public office. The case, however, does not clearly state when the Commissioner is wrongfully prescribing a qualification and when he is merely determining "fitness" on the basis of a *statutory* general qualification.

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[15] G.R. No. 29658, November 29, 1968.

[16] The last paragraph of sec. 9 states that persons who at the time of the approval of this Act have rendered at least five years of satisfactory service in a provincial, city, or municipal police agency although they have not qualified in an appropriate civil service examination are considered as civil service eligibles for the purpose of this Act.

[17] G.R. No. 29588, December 27, 1968.

Pursuant to section 19 of Republic Act No. 5185, otherwise known as the Decentralization Act of 1967, the City of Manila created through ordinance the position of city legal officer, the positions of his staff, and appropriated the necessary amount for their salaries. Gregorio Ejercito, the assistant secretary for legal and administrative services of the Mayor, was appointed city legal officer. The respondent Commissioner of Civil Service turned down Ejercito's appointment on the ground of lack of four year's experience in trial work in the Court of First Instance and/or superior courts. The appointments of the 28 members of his staff were also returned on the ground that Ejercito had no legal capacity to recommend them considering that his own appointment had not yet been approved.

One question presented was the power of the Commissioner of Civil Service to impose for the office of city legal officer the qualification standard of "three years experience in general legal work and four years experience in trial work in the Court of First Instance and/or superior courts." The petitioners contended that only the law may prescribe qualifications for an office and that the Civil Service Commissioner has no legislative powers. The Solicitor General could not point to any legal source of the Commissioner's power save that it was reasonable. The Court held that section 23 of the Civil Service Act of 1959 insofar as it provides that "employees shall be selected on the basis of their fitness to perform the duties and assume the responsibilities of the positions whether in the competitive or classified or in the non-competive or unclassified service" is not clear or definite on the point. While broadly hinting that the Commissioner had no such power the Court, however, did not rule categorically on the question because a detailed review of the qualifications of Ejercito showed that he qualified to be city legal officer.

On the issue that the Commissioner of Civil Service is not limited by the law to a period of 180 days within which to act on appointments, the Court ruled that there being no period fixed for the performance of the Commissioner's duty, public policy and the public interest demand that he takes action thereon within the reasonable time of 180 days from date of receipt of the appointments.[18] It also reiterated the doctrine that where the appointee is qualified, the Commissioner of Civil Service has no choice but to attest to the appointment.[19]

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[18] Direct submission of appointments to the Commissioner should be distinguished from appointments under sec. 20 of the Civil Service Act which are attested by provincial or city treasurers, then forwarded for review to the Commissioner. Under sec. 20, the Commissioner is given 180 days to correct or revise the appointments, otherwise they are deemed to have been properly made.

[19] Villanueva v. Balallo, G.R. No. 17745, October 31, 1963; 62 O.G. 8409 (Nov., 1966).

III. Commencement of Official Relation

A. *Appointments in the civil service*

The Civil Service Act became effective June 19, 1959. The passage of years and publicity campaigns notwithstanding, top administrators continue to use terminology that indicates ignorance of basic and simple requirements of the law regarding appointments.

In the *Fernandez v. Romualdez* case, the petitioner was extended a "Probationary" appointment to fill a position whose incumbent was still appealing an administrative case.[20] The appointing power should have been aware that any appointment to a temporarily vacant item must be a designation or an acting appointment. And even if a regular appointment under the Civil Service Law can be made, it has to be either permanent, provisional or temporary.[21] A "probationary *period*" of six months is required of *permanent* appointees. Nowhere in the law can one read "probationary" to mean acting or temporary. What is even more surprising in the *Fernandez* case was the approval by the Civil Service Commissioner of the probationary appointment, "as indicated on the face thereof." The Supreme Court, of course, had to rule that the appointment erroneously termed probationary, was, as later corrected by the appointing power, a temporary one which is terminable anytime.

In the *Jimenea v. Guanzon*[22] case, a civil service eligible was given a "provisional" appointment to a classified item vacated by a patrolman confined at the National Mental Hospital.[23]

Since a provisional appointment presupposes the absence of eligibles, the Court held that the appointment could not be provisional. The appointee himself and other candidates to the position had appropriate eligibility. The Court upheld the action of the Civil Service Commissioner in correcting the appointment to reflect its true nature as intended by the outgoing mayor. What the outgoing mayor meant to do was to extend a "temporary" appointment. He was a lameduck mayor who left the making of permanent appointments to the incoming mayor. The urgent need created by the incapacity of a patrolman was met by what the Court ruled was properly "temporary" and not provisional, much less a permanent appointment.

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[20] Fernandez v. Romualdez, G.R. No. 26208, April 3, 1968.

[21] Rep. Act No. 2260 (1959), sec. 24.

[22] Jimenea v. Guanzon, G.R. No. 24795, January 29, 1968.

[23] A provisional appointment may be issued upon the prior authorization of the Commissioner in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment. Civil Service Act, sec. 24(c).

The Court added the rule that where the nature of an appointment is temporary it cannot acquire a character of permanence simply because the item occupied is a permanent position.[24]

While the Court in the *Jimenea* case allowed the Commissioner to read the mind of the appointing power and to change the name of the appointment to that which the mayor intended, a correction in the nature of an appointment was denied in the case of *Santos v. Chico*.[25] The mayor of Baliuag, Bulacan extended *temporary* appointments to several policemen, but the Commissioner of Civil Service attested them as provisional. When the mayor tried to substitute non-eligibles for the petitioning non-eligibles, the action of the Commissioner was used to justify the petition for a writ of mandamus. The Court stated that while the Civil Service Law recognizes three classes of civil service appointments, permanent, provisional, and temporary, each class with requisites and effects of its own, the determination of the kind of appointment to be extended lies in the official vested by law with the appointing power and not in the Commissioner of Civil Service. The latter has no authority to supersede the discretion of the former on the nature or class of the appointment extended. All that the Commissioner is empowered to do is to approve or reject the appointment, depending upon its compliance with statutory requirements and to review, correct, or revise those made by provincial, municipal, and city executives to make them conform thereto. The Commissioner cannot exercise the power of appointment that the law has lodged elsewhere.

In the *Del Rosario v. Subido*[26] case the termination of the provisional appointment of the non-eligible chief of police, 30 days after the mayor received the certification of eligibles with appropriate chief of police eligibility was upheld.

B. *Appointments in government-owned or controlled corporations*

The extent of the application or non-application of the Civil Service Law to employees of government-owned or controlled corporations exercising proprietary functions continues to be uncertain. No less than the administrator of one of the biggest and wealthiest proprietary institutions was alleged to have remarked that the present state of confusion allows employees to enjoy the security of tenure or the rules on disciplinary action of the Civil Service Act and the salaries and fringe benefits of collective bargaining agreements, at the same time. Does the

[24] Citing Villanosa v. Alera, G.R. No. 10586, May 29, 1957; Eligida v. Gacutara, G.R. No. 19588, August 29, 1957; Quitiquit v. Villacorta, G.R. No. 15048, April 29, 1960, 58 O.G. 1967 (March, 1962).

[25] G.R. No. 24155, September 28, 1968.

[26] *Supra*, note 14.

enjoyment of benefits pursuant to a collective bargaining agreement bring employees outside the scope of the Civil Service Law because they become persons employed on a contract basis? How do we reconcile the all-embracing scope of the civil service with the principles implicit in collective bargaining agreements? How can terms and conditions of employment be governed by the Civil Service Law when they can also be altered by collective bargaining contracts imposed by the bludgeoning power of a strike? How do we enforce provisions of law which specifically require civil service coverage?[27]

The foregoing questions could have been at least partially answered, but were not, in the case of *Commissioner of Civil Service v. Bautista.*[28] Apparently, the Supreme Court is leaving to Congress the formulation of a more consistent and definite policy instead of using judicial interpretation to bring out a clear pattern.

In 1948 the Manila Railroad Company entered into a collective bargaining agreement with the Kapisanan ng mga Manggagawa sa Manila Railroad Company covering several matters including the standardization plan of salary scales and rules to govern the appointment and promotion of its employees.

In 1959, after Republic Act No. 2260, MRR required its employees, in compliance with the rules and regulations of the Civil Service Commission to take a qualifying examination as a condition for the permanent retention of their employment. The employees objected.

After the notice of strike, the Department of Labor intervened for purposes of conciliation and convinced both parties to submit the issue or controversy to an arbitrator for adjudication. The Presiding Judge of the Court of Industrial Relations was selected as arbitrator.

Both parties agreed that the decision of the arbitrator would be final and unappealable. The Commissioner of Civil Service signed the joint letter after the following statement "With our concurrence, subject to the Constitution."

The award was not contested by Union and Company but the Commissioner of Civil Service commenced certiorari proceedings to set it aside on grounds that the Court of Industrial Relations had no jurisdiction to decide whether the Civil Service Law is applicable or

[27] Sec. 3(c) of the Social Security Act, as amended, provides "that the personnel of the System shall be selected only from civil service eligibles certified by the Commissioner of Civil Service and *shall be subject to civil service rules and regulations.*" In practice, they are not so subjected because the terms and conditions of employment are governed and determined by collective bargaining agreements.

[28] G.R. No. 19911, March 15, 1968.

not and that the arbitrator ruled on what the Commissioner of Civil Service can do or cannot do under the law.

The Court held that the submission of the question whether or not the appointment of said workers was exempt from the operation of the Civil Service Law in view of the collective bargaining agreement, to an arbitrator who was at the time precisely the Presiding Judge of the Court of Industrial Relations is neither unlawful or unconstitutional. The parties primarily involved in the controversy took this step for the purpose of preserving industrial peace and avoiding unnecessary litigation between them. Besides, their solemn agreement to accept the award of the Arbitrator as final and unappealable, impliedly gave it the character of a compromise agreement binding upon the contending parties. If parties must be deemed bound by and in estoppel to assail the award, the Supreme Court saw no reason why the Commissioner should not be similarly bound, his predecessor in office having concurred with the agreement to refer the controversy to an Arbitrator.

The contention that the award virtually tells the Commissioner what to do and what not to do in connection with the discharge of his official duties was held as due to a misapprehension of its purpose and effect — which was nothing more than to decide the question of whether or not the employees of the Company who were members of the Union before the enactment of the Civil Service Law were covered by the provisions of the latter.

C. *Appointments by the Auditor-General*

The scope and extent of the authority of the Auditor-General to make appointments was sidestepped in the *Aragones v. Subido*[29] case. Sixty-three petitioners are certified public accountants with first grade civil service eligibility under Republic Act No. 1080. When their appointment papers were forwarded to the Civil Service Commissioner, he stated that he was willing to approve them only as "provisional" pending qualifying examinations for auditing examiners and auditors. One question presented to the Court was whether lawyers and certified public accountants are eligible for permanent appointments as auditors and supervising auditors. Another was the interpretation of the provision of Republic Act 2716, An Act to Insure the Independence of the General Auditing Office, which states that appointments of the subordinate officials and employees of the General Auditing Office shall be made by the Auditor General in accordance with the Civil Service Law but shall not be subject to the approval or review of

[29] G.R. No. 24303, September 23, 1968.

any other official, board, commission or executive office as a prerequisite for the payment of their salaries: Provided, That such appointments shall be submitted to the Bureau of Civil Service for *attestation*. The questions became academic when the Commissioner of Civil Service decided to consider Bar, CPA, and First Grade eligibilities as the *most nearly appropriate eligibilities* for auditor and supervising auditor and, therefore, qualified the petitioners for permanent appointments. This case raises the question — How do we distinguish between "most nearly appropriate" eligibles under Rule V and provisional non-eligibles under Rule VI of the Civil Service Rules and Regulations? One gets a permanent item, the other does not.

The meaning of "attestation" was, however, clarified in three other cases consolidated into one decision.[30]

The Supreme Court held that appointments made by the Auditor-General, in these cases the promotion of the Pasay City Auditor to NAMARCO Auditor, do not become complete or final until approved by the Commissioner of Civil Service. The Court stated that while the Constitution intended to make the office of the Auditor General independent so that it may be entirely free from pressure, still the powers of the Auditor General particularly on the matter of appointments are not absolute and unlimited; nor is the enjoyment of absolute and unlimited powers essential to the independence of his office.

On the argument that the appointments were submitted to the Commissioner of Civil Service, as required by law[31] only for purposes of attestation, it was held that attestation does not only mean that the Commissioner of Civil Service shall take note of the fact that the particular appointment submitted to him had been made by a competent officer. The authority to attest implies the authority to determine whether the appointment was made in accordance with law.

In this case, the Civil Service Commissioner found the Pasay Auditor De la Rea guilty of misconduct in office. The question of whether this administrative decision was reviewable by courts through prohibition, was answered in this manner: The Commissioner of Civil Service has the final authority to pass upon the removal, separation, or suspension of officers and employees in the competitive service. De la Rea did not appeal from the decision and not having exhausted all administrative remedies cannot avail himself of prohibition or other extraordinary legal remedies.

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[30] De la Rea v. Subido, G.R. No. 26082, March 1, 1968; Mathay v. Arca, G.R. No. 27246, July 31, 1968; De la Rea v. Mathay, G.R. No. 27248, March 1, 1968.

[31] Rep. Act No. 2716 (1960), sec. 1.

D. *Appointments in waterworks of chartered cities*

According to the case of *Almendras v. Del Rosario,*[32] it is the Secretary of Public Works and Communications, not the city officials, who appoints officers and employees of city waterworks.

A clarificatory judgment[33] added that while the city mayor of Cebu had no authority to appoint the officers and employees of the Osmeña Waterworks Systems, the employees who had actually rendered service are entitled to payment of salaries from the date of their appointments by the mayor up to the finality of the decision. There being no *de jure* employees, it is surprising why the City Treasurer had to disturb the Supreme Court instead of just applying the *de facto* doctrine on salaries.

IV. POWERS AND DUTIES

A. *Abuse of discretion*

In the absence of abuse, courts will not, as a rule, interfere in the performance by public officers of their discretionary functions. But where the Secretary of Public Works and Communications and the officials of the Radio Control Office show clear official neglect and unwarranted inaction in the matter of the issuance of renewal licenses for the operation of radio stations, the Supreme Court will strike down the subsequent exercise of powers involving judgment and discretion, even where the respondents claim they are performing a duty imposed by law. In the case of *Lemi v. Valencia,*[34] while a radio station was broadcasting, an agent of the Public Works Secretary, an inspector of the Radio Control Office and agents of the Presidential Anti-Graft Committee carried away the radio transmitter on grounds of gross violation of the Radio Control Law. A concurring opinion was more emphatic in its condemnation of the practice followed by the Radio Control Office of indefinitely and unreasonably delaying action upon radio license applications and then pouncing upon them for broadcasting without license. The concurring Justice stated that he viewed official conduct of the type described in the decision not as a mere instance of official indolence but a subtle attempt to impose absolute radio censorship and to silence at will radio stations which allow airing of views critical of the powers that be. He called it indirect subversion of the constitutional liberties of speech and of the press.

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[32] G.R. No. 20158, July 29, 1968.
[33] Almendras v. del Rosario, G.R. No. 20158, October 14, 1968.
[34] GR. No. 20768, November 29, 1968.

B. *Rights and privileges*

The Supreme Court had occasion to touch upon compensation, hours of work and retirement benefits of public officers and employees.

The *Rancho v. Municipality of Iligan* case[35] states that the lack of funds of a municipality does not excuse it from paying the statutory minimum wages of its employees, which is a mandatory statutory obligation. To uphold a defense of lack of available funds would render the Minimum Wage Law futile and defeat its purpose. The Minimum Wage Law took effect in 1952. The municipality of Ilagan, Isabela should have taken steps to implement it. To excuse defendant municipality would be to permit it to benefit from its nonfeasance and to make the effectivity of the law dependent upon the will and initiative of said municipality without statutory sanction. This emphatic decision,[36] notwithstanding, how many municipalities or even provinces continue to pay sub-legal compensation to some of their employees?

Auditors of agencies, commissions, and government owned or controlled corporations are, by law, given a salary equal to the salary authorized for the first assistant or next ranking managing head of the agency, commission or corporation.[37] Auditors, therefore, get the same salary as executive vice-presidents, deputy administrators, assistant general managers, or whatever the Number Two management man receives. It was, however, held in the *De la Rea*[38] cases that the increase in the annual salary of the Assistant General Manager of NAMARCO did not automatically and correspondingly increase that of its Auditor. For this purpose, there was need of an appointment, promotional as to salary, fixing his new compensation at the increased rate.[39]

The *Carlos v. Villegas*[40] case ruled that the Eight-Hour Labor Law does not apply to firemen and other members of the uniformed force division of the Manila Fire Department who are employees of the city of Manila in its governmental capacity. The Court stated that the 8-hour labor law does not apply to civil service employees who are still governed by Sections 566 and 259 of the Revised Administrative Code. The nature of firemen's duties excepts them from the applicability of the 8-hour labor law.

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[35] G.R. No. 23542, January 2, 1968. The market cleaner in this case was paid ₱55.00, later increased to ₱60.00 a month.

[36] The Minimum Wage Law was extended to provincial and municipal employees by Rep. Act No. 4180 (1965).

[37] Rep. Act No. 2266 (1959), sec. 1.

[38] *Supra*, note No. 30.

[39] Reiterating the rule in Genato v. Sychangco, G.R. No. 23095, May 12, 1967.

[40] G.R. No. 24394, August 30, 1968.

It added that parallel to the instant case are the circumstances obtaining in *Department of Public Services Labor Union v. CIR*[41] where it was held that in view of the exigency of the service, garbage collectors in Manila are not entitled to the benefits of the 40-hour a week work law.

In *Aquino v. GSIS General Manager,*[42] the Court held that the chief accountant of the Central Luzon Agricultural College who placed 4th year and BSC as educational qualifications in his information sheet when in fact he reached only third year high school may be denied GSIS retirement benefits. The administrative penalty of being considered resigned is separation for cause that results in forfeiture of the benefits. All he could get was a refund of his own premiums.

C. *Disabilities and inhibitions*

The *Morfe v. Mutuc*[43] decision upheld the validity of the Anti-Graft and Corrupt Practices Act, more specifically the requirement on a statement of assets and liabilities, against an attack on its constitutionality. The plaintiff had argued that the Act is violative of due process as an oppressive exercise of police power and as an unlawful invasion of the constitutional right to privacy, implicit in the ban against unreasonable search and seizure construed together with the prohibition against self-incrimination. The Act, therefore, continues to be a significant statement of disabilities and inhibitions that a person accepts when he enters upon a public office.

D. *Liability of public officers*

The liability of public officers vis-a-vis the government for their wrongful acts done outside of or in excess of the scope of their authority was discussed in the case of *Nemenzo v. Sabillano.*[44] Upon assuming office in January 1, 1955 the defendant mayor of Pagadian, Zamboanga del Sur terminated the services, among others, of the plaintiff, a police corporal with civil service eligibility. After reinstatement, the plaintiff filed claim for the payment of his back salaries out of government funds. Both the Commissioner of Civil Service and the Auditor-General agreed that "Corporal Joaquin Nemenzo is entitled to payment of his salary corresponding to the whole period of his illegal separation." The Auditor-General, however, stated that such salaries were a personal liability of the mayor who caused the illegal ouster. The Court stated that the defendant was correctly adjudged personally

[41] G.R. No. 15458, January 28, 1961.
[42] G.R. No. 24859, January 31, 1968.
[43] *Supra*, note 1.
[44] G.R. No. 20977, September 7, 1968.

liable. His act of dismissing appellee without previous administrative investigation and without justifiable cause, as held by the Commissioner of Civil Service, is clearly an injury to the appellee's rights. Appellant cannot hide under the mantle of his official capacity and pass the liability to the municipality of which he was mayor. The Court observed that there are altogether too many cases of this nature, wherein local elective officials, upon assumption of office, wield their new found power indiscriminately by replacing employees with their own proteges, regardless of the laws and regulations governing the civil service. It added that victory at the polls should not be taken as authority for the commission of such illegal acts.

V. Termination of Official Relations

A. *Abandonment*

In the *De la Rea*[45] cases, the Auditor General and the Commissioner of Civil Service contended that *De la Rea* had abandoned the position of Pasay City Auditor because, after the Civil Service Commissioner had disapproved his promotional appointment as NAMARCO Auditor and considered him as still the auditor of Pasay City, he refused to accept or abide by that ruling. The Court rejected this contention and stated that abandonment requires clear and strong proof. De la Rea was entitled to continue acting as NAMARCO Auditor while involved in a legal proceeding where the Civil Service Commissioner's ruling was in issue. As to the claim that De la Rea's return to Pasay City will cause difficulties because other parties had been appointed, the Court stated this is an administrative problem to be resolved by proper authorities. Furthermore, the new appointees should have had knowledge of the cases involving the Pasay Auditor's position.

B. *Expiration of term or tenure*

In discussions on security of tenure, an obiter in the case of *De los Santos v. Mallari*[46] keeps cropping up. It is the statement to the effect that policy determining, primarily confidential, and highly technical positions are excluded from the merit system and that dismissal at pleasure of officers and appointees appointed thereto is allowed by the Constitution. Subsequent cases have since categorically ruled that these three types of non-competitive or unclassified positions are covered by the Constitutional protection that no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.[47] Yet, primarily confidential employees continue

[45] *Supra*, note No. 30.
[46] 87 Phil. 289 (1950).
[47] Corpus v. Cuaderno, G.R. No. 23721, March 31, 1965; Hernandez v. Villegas, G.R. No. 17287, June 30, 1965.

to be separated from office without cause and, in the case which is surveyed, by no less than the Office of the President.

In the case of *Ingles v. Mutuc*[48] civil service eligibles working in the Office of the President were given their walking papers by the Executive Secretary on the theory that officers occupying primarily confidential positions are subject to removal at the pleasure of the appointing power. In holding this theory to be erroneous, the Court took pains to clarify any lingering misconceptions about the *De los Santos* obiter and to reiterate the all embracing protection of the "removal for cause" clause.

The Court also clarified a different misconception which veers all the way in the opposite direction, a view which holds that officers with primarily confidential positions can be made to yield their offices only for the same causes and in the same manner as those in the competitive service. It is common knowledge that some government administrators use the primarily confidential device to circumvent the merit rule on appointments and the next-in-rank doctrine in promotions. Upon a change of administration, these confidential employees insist on retaining their items or converting them to classified ones.

While primarily confidential officers and employees may not be removed except for cause, their items of office may be brought to an end by loss of confidence. In the event of loss of confidence, the Court pointed out that there is no *dismissal* or *removal*. There is simply expiration of the term of office.

The *Ingles* decision also brings out a civil service rule which corrects another evil in the public service and this evil is the widespread practice of giving a "primarily confidential" designation to classified, competitive, or even clerical positions.[49] The Court pointed out that handling confidential items — and physicians, judges, court stenographers, etc. handle confidential matters — does not make a public officer a primarily confidential one. As stated in an earlier case,[50] it is not the executive pronouncement that conclusively determines the character of a position but the nature of the functions attached to it. Thus the decision was in favor of Ingles and his co-plaintiffs, civil service eligibles whose items fail to indicate their primarily confidential nature. To validly terminate their terms of office, the burden of proof is on the Executive Secretary to show that they belong to the primarily confidential class.[51]

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[48] G.R. No. 20390, November 29, 1968.

[49] Sec. 24(F) of the Civil Service Act states that no person appointed to a position in the non-competitive or unclassified service shall perform the duties properly belonging to any position in the competitive service.

[50] Pinero v. Hechanova, G.R. No. 22562. October 22, 1966.

[51] The officers and employees enjoy only such protection as is conferred by their appointments. Were they appointed to the classified service?

We now anticipate perplexing questions arising from the decision. What is the procedure in terminating the term of a primarily confidential employee? Is it sufficient for the appointing power to inform him that confidence no longer exists? And are there clear rules on how the terms of office of officers holding highly technical and policy determining positions are terminated? How do we judge the loss of highly technical qualifications?

C. *Abolition of office*

Termination of official relation may also be effected through abolition of office.

In the case of *Cruz v. Primicias,*[52] the Court held that valid abolition of offices is neither a removal nor a separation of the incumbent and cited some cases[53] to show that this is a well known rule. It found out, however, that the abolition of offices by the Provincial Governor of Pangasinan, pursuant to a resolution of the Provincial Board was made in bad faith, for political or personal reasons, and circumvents the constitutional security of tenure of civil service employees.[54] Not being done in good faith, the abolition was void and the incumbents were deemed never to have ceased to hold office. The claim of economy was belied by the fact that while 22 positions with incumbents were abolished, 28 new positions were simultaneously created incurring additional appropriations of more than ₱63,000 a year. The need for greater efficiency was belied by the efficiency of 22 civil service employees who received promotional appointments shortly before abolition of their offices and their being replaced by 23 confidential employees. Furthermore, the answer of the respondent admitted the need for political loyalty of highly confidential assistants as partly behind the abolition.

The *Gutierrez v. Court of Appeals*[55] decision declared the abolition of the office of Budget Officer and Fiscal Analyst in the Batangas governor's office as removal which was patently illegal, arbitrary, and oppressive.

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[52] G.R. No. 28573, June 13, 1968.

[53] Manalang v. Quitoriano, 94 Phil. 903 (1954); Rodriguez v. Montemayor, 94 Phil. 964 (1954); Castillo v. Pajo, 103 Phil. 515 (1958).

[54] Citing Briones v. Osmeña, 104 Phil. 588 (1958); Castro v. Sagales, 94 Phil. 208 (1953); Gacho v. Osmeña, 103 Phil. 837 (1958); Gonzales v. Osmeña, G.R. No. 15901, December 30, 1961; Urgello v. Osmeña, G.R. No. 14908 October 21, 1963, 62 O.G. 7724 (Oct., 1966); Ocampo v. Duque, G.R. No. 23812, April 30. 1966, 63 O.G. 9914 (Oct., 1967); Abanilla v. Ticao, G.R. No. 22271, July 26, 1966, 64 O.G. 5447 (May, 1968); Arao v. Luspo, G.R. No. 23982, July 21, 1967 — to illustrate how well-settled this rule should be.

[55] G.R. No. 25972, November 26, 1968.

It is quite apparent from the decision that abolition was used to pressure the new budget officer and fiscal analyst to go back to his old position as market administrator and deputy. In fact, throughout the duration of the case, he never received the increased salary of his promotion to the newly created and later abolished, office.

The Court also negated the allegation that the creation of the new office was *ultra vires* and the allegation of contrariety and antagonism of functions with those of the provincial treasurer-petitioner. The functions of both offices were reviewed to show there is no incompatibility.

D. *Removal for cause*

In the *Aquino v. GSIS General Manager*[56] case, the public officer alleged that the filling of the information sheets with wrong data regarding his educational qualifications *had no connection with the performance of his work.* The Court held that misrepresentation in a sworn application for a civil service examination or deception or fraud in securing examination, registration, appointment, or promotion is ground for disciplinary action. This act is both perjury and falsification of official documents and infirms the officer's integrity and reliability

The case of *Perez v. Subido*[57] emphasizes due process as an element of security of tenure.

Does the Commissioner of Civil Service have the power to invalidate *ex parte* the examination papers of an employee, cancel his eligibility as patrolman (derived therefrom) and eventually terminate his services as patrolman in the Manila Police Department? The Supreme Court answered that he does not.

In his application for patrolman examination, Perez answered incompletely the question whether he had ever been accused of, indicted for, or tried for the violation of any law, ordinance, or regulation before any court.

The Commissioner addressed a letter to the Mayor informing him of the invalidation of the examination papers of the appellee because of his failure to state in his application to take the examination that he had been charged in two other criminal cases. The letter also covered cancellation of his civil service eligibility, and termination of his employment as patrolman.

[56] *Supra*, note 42.
[57] G.R. No. 26791, June 22, 1968.

The Court stated:

> "Section 32 of the Civil Service Law of 1959 echoes this precept with the provision that '[N]o officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process.' Said Section 32 adds that the officer or employee complained of 'shall be entitled to a formal investigation if he so desires, in which case, he shall have the right to appear and defend himself at said investigation in person or by counsel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compulsory process or *subpoena duces tecum*. A civil service employee should be heard before he is condemned. Jurisprudence has clung to this rule with such unrelentless grasp that by now it would appear trite to make citation thereof."

E. *Preventive suspension*

In *Noblejas v. Teehankee*[58] the petitioner questioned the authority of the President to preventively suspend him. He alleged that Section 2 of Republic Act No. 1151 which entitles the Commissioner of Land Registration to the same compensation, emoluments, and privileges of a Court of First Instance Judge means that section 67 of the Judiciary Act which states that "no district judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist in the judgment of the Supreme Court" should apply to him.

The Supreme Court denied the petition for this reason:

> "If the Legislature had really intended to include in the general grant of 'privileges' or 'rank and privileges of judges of the Courts of First Instance' the right to be investigated only by the Supreme Court, and to be suspended or removed only upon recommendation of that Court, then such grant of privileges would be unconstitutional since it would violate the fundamental doctrine of separation of powers, by charging this court with the administrative function of supervisory control over executive officials and simultaneously, reducing *pro tanto* the control of the Chief Executive over such officials. . . . The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions."

The decision also answers the question whether the Solicitor-General who has the rank and privilege of a Justice of the Court of Appeals may be removed only through impeachment.[59]

In *Milanes v. de Guzman*,[60] the preventive suspension by the Governor for oppression, abuse of authority, and misconduct was held

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[58] G.R. No. 28790, April 29, 1968.

[59] This in turn raises the old question whether the statute stating that Court of Appeals Justices may be removed only through impeachment proceedings is constitutional or not.

[60] G.R. No. 23967, November 29, 1968.

improper because the acts imputed to the petitioner were not committed or incurred in office. The acts were performed while he was addressing the public in a political rally, held by the Nacionalista Party and not the government, in support of the Nacionalista candidate for the House of Representatives. The mayor acted in his private capacity.[61]

The sixty-day limit of preventive suspension pending an administrative investigation is interrupted by delays due to the fault, negligence, or petition of the respondent. *Romero v. Municipal Mayor of Boljoon*[62] states that the act of the suspended petitioner in appealing the decision is a delay due to his voluntary petition. Even if sixty (60) days have elapsed during the period of appeal, he shall not be reinstated.

In the case of *Valdez v. Gutierrez*,[63] the appellant Valdez, a non-eligible, was appointed chief of police of Malabon, Rizal. On June 13, 1962, he was preventively suspended upon being charged with murder. On September 10, 1962, a person certified by the Civil Service Commission as eligible for Chief of Police was appointed. After Valdez was acquitted of the murder charge in 1965, he sought the usual reinstatement and back salaries.

The Court held that he could no longer seek reinstatement as the position was now validly held by an eligible. Valdez' appointment, even if valid, was temporary. Reinstatement and back salaries[64] can be invoked only by civil service eligibles.

In the case of *People v. Anino*,[65] the barrio captain of Villaflor, Oroquieta, Misamis Occidental was charged criminally with allowing, encouraging, and tolerating illegal cockfights and a game of chance called "hantak" from which she collected 20% of the proceeds for the barrio treasury.

A motion to quash which was denied by the Court of First Instance was appealed. The accused claimed that the filing of the case directly with the CFI is contrary to section 12 of the Barrio Charter Act, that the exclusive and original jurisdiction to investigate barrio officials for neglect of duty, oppression, corruption, or other form of mis-

[61] Sec. 2188 of the Revised Administrative Code under which the case was decided provides that "the provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption, or other form of mal-administration of office, and conviction by final judgment of any crime involving moral turpitude." This provision has been superseded by sec. 5 of Rep. Act No. 5185, Decentralization Act of 1967.

[62] G.R. No. 22062, March 29, 1968.

[63] G.R. No. 25819, May 22, 1968.

[64] Rep. Act No. 557 (1950), sec. 4.

[65] G.R. No. 25997, May 28, 1968.

conduct in office, and conviction by final judgment of any crime involving moral turpitude is vested in the mayor.

The Court held that the power of the municipal mayor to investigate complaints against barrio officials under section 12 of the Barrio Charter Act,[66] construed in relation to section 2190 of the Revised Administrative Code is purely administrative in nature and this is deducible from the fact that the penalty that can be imposed upon the erring official is only either reprimand, suspension or dismissal from office. It stated that it is clearly inferrable from the main section of the law that when the act constituting the neglect of duty, oppression, corruption, or other form of misconduct in office amounts to a transgression of the penal laws, then it becomes the duty of the prosecuting officer of the government to take a hand in the case by instituting the corresponding investigation and prosecution of the guilty person to the full limit of the law.

After distinguishing between an administrative case and a penal case, the Court went on to define the nature of a mayor's supervisory power over barrio officials. It stated that the power of supervision of the municipal mayor over barrio officials is similar and analogous to the supervision exercised by the provincial governor over municipal officials and thus, when the provincial governor is informed that a municipal official is guilty of misconduct in office amounting to a criminal liability it is the duty of the governor to refer the matter to the provincial fiscal who is duty bound to institute the necessary proceedings in court.

ELECTION LAW

The majority of cases on election law during the year under review refer to the recurring problem of "grab-the-proclamation" and let the victimized candidate face the hurdle of a long drawn, expensive, and insuperable, if not useless, election protest. Almost all the 1968 cases, therefore, dealt with the law on canvass and proclamation, the composition of canvassing bodies, and the jurisdictional delineation of powers between the Commission on Elections and the regular courts of justice.

I. Powers of the Commission on Election

A. *Statistical improbability revisited*

One easy answer to "grab-the-proclamation" tactics is the use by the Commission on Elections and canvassing bodies of the doctrine

[66] Rep. Act No. 3590 (1963).

of statistical improbability enunciated in the *Lagumbay v. Climaco*[67] decision. However, this doctrine has never been a popular one.[68] And in 1968, it did not prove popular with the Supreme Court itself. The Court did not categorically lay the doctrine down to rest. In fact, it quoted truisms from *Lagumbay v. Climaco* in several decisions. However, it consistently denied attempts by candidates and even by the Comelec to use the doctrine. The doctrine, therefore, continues to be some kind of grinning Cheshire cat watching over elections but with its future use perhaps as statistically improbable as the situation that gave rise to it.

In cases involving the doctrine, the Court invariably answered that to support a conclusion of statistical improbability which indicates election returns to be obviously manufactured, there must be a uniformity of tallies in favor of all candidates belonging to one party and the systematic blanking of all the opposing candidates.

In the case of *Una Kibad v. Comelec*,[69] the Court repeated that where all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number, whereas all the eight candidates of the other party got precisely nothing, common sense dictates that such returns are obviously manufactured and should be rejected. But where, as in this case, no candidate obtained a zero vote and where there was a mere excess of votes counted over the votes cast, the doctrine should not apply.

The situation in *Alonto v. Comelec*[70] was similar. The Court answered that the alleged excess of votes does not necessarily support the conclusion that the returns are obviously manufactured. There is no uniformity of tallies in favor of candidates belonging to one party and the systematic blanking of opposing candidates.

In *Dizon v. Tizon*,[71] the election return showed that 279 votes had been cast and counted while the certification of the election registrar showed that only 80 voters actually voted. Statistical improbability was denied.

The explanation for the withholding of the doctrine is given in the *Una Kibad* case. The Court stated, "It is understandable why the trends as reflected in later adjudications is to view the *Lagumbay* doctrine restrictively, the utmost care being taken lest in penalizing fraudulent and corrupt practices, which indeed is called for, innocent

[67] G.R. No. 25444, January 31, 1966, 62 O.G. 2973 (May, 1966).
[68] *See* Corpuz, *Statistical Improbability as a Ground for Annulling Election Returns*, 40 PHIL. L. J. 577 (1966).
[69] G.R. No. 28469, May 7, 1968.
[70] G.R. No. 28490, February 28, 1968.
[71] G.R. No. 28563, March 27, 1968.

voters become disenfranchised, a result which hardly commends itself." The certification which showed an excess of 201 votes counted over votes cast was held not material in the *Dizon* case insofar as the board of canvassers was concerned, since its ministerial duty was to read and canvass the results of the election on the basis of the returns once satisfied that the same were genuine.

In the *Lidasan v. Comelec*[72] case, the municipal board of canvassers rejected certain returns on the basis of the *Lagumbay* doctrine. The order of the Comelec telling the board to reverse itself and to re-canvass the returns on the ground that the *Lagumbay* doctrine does not apply was upheld by the Supreme Court in its denial of the petition for certiorari. Where the Comelec ordered the non-application of the *Lagumbay* doctrine, it was upheld.

In the *Tagoranao v. Comelec*[73] case, it was the Comelec that tried to apply the *Lagumbay* doctrine by ordering the canvassing board to reject the return from precinct 2 as "obviously manufactured". In brief, the findings of the Comelec are as follow: While a total of 450 ballots were issued to Precinct 2, 570 ballots were found inside the kerosene can that was used as a ballot box. Tagoranao received a total of 366 votes. Even if all the 259 registered voters of the precinct voted for Tagoranao, there would still be 107 votes cast for him in excess of the total number of registered voters. The Comelec stated that this is not only statistically improbable, but it is impossible. It added, "one look at the election returns for Precinct 2 and the falsity of the same will stare at you in the face."

The Comelec also found that five senatorial candidates received 375 votes each and three candidates received 370 votes each. It then declared that it is statistically improbable that the alleged 375 registered voters should one and all equally and in the same manner vote for three Nacionalista candidates and two Liberal candidates for senator. Nevertheless, the Supreme Court held that the *Lagumbay* doctrine does not apply. The return in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when the return is compared with the certification of the election registrar or with the Comelec record of the number of ballots issued to precinct 2 or with plebiscite returns that a discrepancy appears. In this case, the Supreme Court stated that the defect is not apparent and therefore, the return is not obviously manufactured, if manufactured it is. It may be true that more votes were cast than there were voters, but this question should be threshed out in an election protest.

[72] G.R. No. 28473, March 6, 1968.
[73] G.R. Nos. 28590 & 28598, March 12, 1968.

A similar statement could be made for the *Lagumbay* returns. The defect was not really apparent on the face of the returns but was deduced from their statistical improbability. And in the *Lagumbay* case, the question could also be threshed out in an election protest.

B. *Comelec jurisdiction vis-a-vis regular courts of justice; guidelines in canvass problems*

In a case like *Ong v. Comelec,*[74] where copies of election returns were alleged to have been tampered with and falsified after they have left the hands of election inspectors, where should an aggrieved party seek his remedy — the Comelec or the Court of First Instance?

In answering this question, the Supreme Court felt constrained to give a detailed expositor on the law for guidance in similar cases. Some of the expositor is reiteration and amplification but it is reiteration and amplification worth repeating. Too much confusion is evident in the 1968 cases on what to do when election returns are being falsified or when canvassing is based on fraudulent statements or even when the legitimacy of the canvassing board itself is in doubt.

In *Ong v. Comelec,* the Comelec first allowed Etcubañez, another respondent, to go to court for judicial remedy. The court of first instance declined jurisdiction when it found out that the requisites for a judicial recount were not present. The Comelec took over, suspended canvass, and gave due course to a petition whereby it would get custody of the election returns and the ballot boxes, and hold a hearing on which returns are genuine.

In reviewing Ong's contention that the Comelec had no jurisdiction to grant Etcubañez' last petition, the Supreme Court first stated that a board of canvassers must be guided by election returns transmitted to it which are in due form. The board must be satisfied of the genuineness of the returns — that the papers presented to them are not forged and spurious. Where the returns are obviously manufactured, the board will not be compelled to canvass them.[75] And if the board of canvassers makes a wrong decision or delays the making of a decision on returns alleged to be falsified or spurious, the matter should be immediately elevated to the Comelec. The Court stated that the Comelec has jurisdiction to direct that only genuine returns should be considered.[76]

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[74] G.R. No. 28415, January 29, 1968.

[75] Citing Nacionalista Party v. Comelec, 85 Phil. 149 (1949), Lagumbay v. Climaco, *supra,* note 67.

[76] Citing Espino v. Zaldivar, G.R. No. 22325, December 11, 1967, and Cauton v. Comelec, G.R. No. 25467, April 27, 1967.

Turning to the power of a court of first instance to direct a recounting, the Supreme Court cited section 163 of the Revised Election Code[77] and emphasized that judicial recount of votes is a special authority conferred on the court to be restrictively construed and not made to extend even to cases bearing some resemblance to the situation contemplated by section 163. Thus, a court may order judicial recount only if it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the results of the election. There must be a *contradiction* in the *different* returns as prepared and signed by the inspectors. Judicial recount is not a remedy where a contradiction is the result of tampering after the returns have left the hands of the election inspectors.

If the returns are falsified, it is the duty first, of the board of canvassers, and then of the Comelec, to ascertain this fact. And if the Comelec summarily finds they are indeed falsified, it must order canvassing upon the basis of authentic copies. In other words, it must find out which of the copies of the returns is authentic and untampered and then order that canvassing be based on that copy.

The increasing and apparent tendency of the Supreme Court to broadly interpret the limits of the Comelec's powers and jurisdiction was impliedly criticized by Ong's argument that in giving the Comelec power to direct the rejection of patently doctored returns, the Court leans too heavily on an administative body which, unlike a court of justice, does not observe procedural safeguards other than the bare requirement of due process. The Supreme Court answered that this tendency merely emphasized the fact that such proceedings are summary — intended to expedite canvassing and proclamation. Aside from the limited cases[78] when judicial recourse before proclamation may be had, the court of first instance must, therefore, wait for a full dress trial during the election contest. In the meantime, the Comelec is in charge.

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[77] This section reads — *When statements of a precinct are contradictory.* — In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected.

[78] Section 154 of the Revised Election Code on Alterations in the Statement and section 163 on Contradictory Statements.

C. *Comelec power to open ballot box and recount ballots*

The Revised Election Code provides for situations where statements of election returns are missing,[79] where there are material defects in form,[80] and where authentic copies of the statements are contradictory.[81] It is silent, however, in a case where the election return is either incomplete or blank. In such a case, what should the board of canvassers do?

In coping with the problem, the Supreme Court again indicated the extent to which it will go in strengthening the hand of the Comelec, as the latter agency deals with canvassing and proclamation anomalies.

The Court was careful to emphasize in the case of *Mutuc v. Comelec*,[82] that its decision should by no means be understood as formulating a rule to control future cases. Even those disputes factually and substantially similar to the *Mutuc* case may call for a different qualitative approach. The Court stated that the *Mutuc* solution is predicated solely upon the peculiar and unusual circumstances therein obtaining. While the decision sets aside resolutions of the Comelec, which the Court said were done with inordinate haste, it nevertheless allowed the Comelec to perform an act without statutory basis — to order the board of inspectors to open the ballot box and retrieve the copy of the election returns therein, and if the same is blank, *to count all the votes cast in said precinct* and then properly accomplish a return based on such a count.

In this case, the Makati, Rizal municipal board of canvassers was faced with an election return which, while listing the names of the candidates, contained no entry at all of the votes cast for them. The provincial treasurer's copy was similarly blank. The Comelec copy was also blank but it showed that a total of 263 votes were cast in Precinct 124.

The Comelec allowed the proclamation of winning candidates to proceed, disregarding the votes from Precinct 124. Basis of this resolution was a showing that the 263 votes would not materially change the results of the election.

In overruling the resolution, the Court reiterated the doctrine that an incomplete canvass of votes is illegal and cannot be the basis of a subsequent proclamation.[83] Citing sections 160, 161, 162, 163 and 168

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[79] REVISED ELECTION CODE, sec. 161.
[80] *Ibid.*, sec. 162.
[81] *Ibid.*, sec. 163.
[82] G.R. No. 28517, February 21, 1968.
[83] Demafiles v. Comelec, G.R. No. 28396, December 29, 1967; Ahes v. Comelec, G.R. No. 28348, December 15, 1967; Abendante v. Relato, 94 Phil. 8 (1953).

of the Revised Election Code, the Court underscored the need to count *all* the votes cast in an election.

The Court reviewed the usual questions. When may the returns be rejected or disregarded as was done in this case? Only when they are palpably irregular or obviously manufactured, but even then the board must exercise extreme caution.[84] If a return is falsified, the board may apply to the Comelec to use another copy which is authentic or genuine.[85] Why must all the votes be counted when there is a need to finish the canvass on time so that proclamation can be made before the beginning of the term of office? Because to disregard returns is to disenfranchise voters.[86] How do we meet the argument that the total of 263 votes in the entire precinct would not materially affect the elections? The eight and the ninth placers among the candidates for councilor had a difference in votes of only 221. Conceivably, the 263 votes could upset the balance. Judicial recount was out. There were no contradictory statements. The statements were all alike in that they were blank or incomplete.

The Court, therefore, stated that the logically obvious and simple step for the Comelec to take was to order the opening of the ballot box to find out if the copy of the return therein was properly accomplished. But having given these instructions, the Court went one logical step further and stated that should the copy of the returns be blank like the three other copies outside, then there was no need to wait for an election protest for a proper count of the votes. The board of inspectors, under Comelec supervision, could count the votes and accomplish the returns. We had here a Comelec recount.

D. *Suspension of canvass and proclamation*

The 1968 decisions sustain the authority of the Comelec to suspend canvass and proclamation under its power to have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections.[87]

This power remains even after the public officer *has been proclaimed and has assumed office.*

It was argued in the *Mutuc* case that the Supreme Court had no more jurisdiction to pass upon the Comelec resolution because the re-

[84] Lagumbay v. Climaco, *supra*, see note 67; Nacionalista Party v. Comelec, 85 Phil. 149 (1949); Estrada v. Navarro, G.R. Nos. 28340 & 28374, December 29, 1967; Una Kibad v. Comelec, *supra*, see note 69; Alonto v. Comelec, *supra*, see note 70; Dizon v. Tizon, *supra*, see note 71.

[85] Ong v. Comelec, G.R. No. 28415, January 29, 1968.

[86] Estrada v. Navarro, *supra*, note 84.

[87] CONST. art. X, sec. 2.

spondents had been proclaimed, they had subsequently assumed office. Some of the petitioners had pending election protests in the proper court of first instance, and the remedy was to be found in an election protest. The Court answered that the foregoing arguments are applicable only where there has been a valid proclamation. Where the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.

The measures taken by the Comelec pursuant to its supervisory powers over canvassing were also outlined in other cases.

In the case of *Macud v. Comelec,*[88] the order of Comelec directing the municipal board of canvassers of Lumba-Bayabao, Lanao del Sur to canvass the results and proclaim the winners was disobeyed. The Comelec suspended the board and substituted the members with government lawyers employed in the Comelec law department. This new board met in Manila and canvassed the returns. It used the copy of the election returns forwarded to the Comelec since the other copy submitted to the board appeared to be tampered. On the basis of the canvass done in Manila, respondent Noor was proclaimed mayor. Certiorari, mandamus, and prohibition brought against the Comelec were turned down by the Court.

In the *Aguam v. Comelec*[89] case, the power of the Comelec to annul a canvass and proclamation even after a candidate had assumed office was again upheld. Advance copies of election returns had been made the basis of the proclamation. The Court stated that a proclamation should be based on the copies of the returns for the municipal treasurer, or if unserviceable on three other authentic copies of the returns, namely: that for the Comelec, or for the provincial treasurer, or that in the ballot box. While, the usual remedy of an aggrieved party after proclamation is to file an election protest, that remedy is based on the assumption that there has been a valid proclamation. Where proclamation is illegal, assumption of office does not affect the basic issues.

E. *Delegation of Comelec powers*

In the case of *Pedido v. Comelec,*[90] the municipal board of canvassers of Pioduran, Albay refused to act upon an election return colored white instead of the usual pink. The local Comelec Registrar asked the board to proceed but it refused. After a second call to convene and canvass was ignored, the Comelec Registrar constituted a new board which proclaimed the respondent Pavia as mayor-elect.

[88] G.R. No. 28562, April 25, 1968.
[89] G.R. No. 28955, May 28, 1968.
[90] G.R. No. 28539, March 30, 1968.

Meanwhile, the original and suspended board met in the house of the re-electionist petitioner Pedido. The members of this suspended board had to use an improvised tally and rely on their notes prepared during their first meeting. They could not examine a single election return because the returns were in the possession of the municipal treasurer.

Aside from declaring that the latter proclamation is invalid and based on a canvass which was no canvass at all, the Court sustained the power of the Comelec to delegate its power of suspending canvass boards to its election registrars. It stated that effective administration and enforcement of election laws require such delegation. The Commissioners are not expected to do all the functions of their office personally. The Comelec should not be hamstrung in its efforts to dispose of election cases before it.

F. *Limitations on Comelec power*

While the Comelec may issue an order setting aside a canvass and proclamation already accomplished, the power to do so is not without limitations.

Such an order was questioned in the case of *Felix v. Comelec.*[91] It appears that Comelec set aside the canvass and proclamation and ordered a new canvass because of a statement signed by the chairman, one member, and the poll clerk of the board of election inspectors. The statement alleged unintentional error, because of physical and mental fatigue, in the preparation of the election return for Precinct 5 of Cainta, Rizal. The Court stated that the remedy for correcting, altering, or amending an election return is section 154 of the Revised Election Code which calls for court approval.[92] Unless the court orders the correction, any recanvass will still have to be on the supposedly erroneous return. Section 154, however, does not apply because one member of the board did not agree that there was an error. The allegation of altered or falsified return was also grounded on a tabulation of results based on returns submitted to the Liberal Party President. The Court stated this allegation is insufficient to annul *ex parte* the canvass and proclamation.

The decision then gave instances when Comelec may order the suspension of a canvass: (1) Another copy or other authentic copies of the statement of the election return from an election precinct sub-

[91] G.R. No. 28378, June 29, 1968.

[92] Sec. 154 states — *Alterations in the statement.* — After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court.

mitted to the board give to a candidate a different number of votes and the difference affects the result of the election. (2) There is a difference between the votes of the same candidate written in words and those written in figures in the same election return. (3) The entry of votes in the election return is on its face clearly falsified. (4) It is not legible. Not one of these instances was present in the case.

While sustaining the power of the Comelec in its role as senatorial canvasser to reject returns which in its opinion are illegal and not authentic, the *Alonto v. Comelec*[93] decision states that Comelec has no authority to impose the same criterion *in advance* upon the provincial boards of canvassers. The latter are entitled to use their own judgment in determining whether the irregularities appearing on the returns before them warrant their rejection. Just because election returns from 40 precincts had already been rejected by the Comelec in the senatorial count does not mean that the same returns should be automatically rejected by the canvass board in the provincial count. Copies of returns upon which provincial canvassers act are different from those in the possession of the Comelec. Irregularities noted in the latter may not necessarily exist in the former. A discrepancy between the two official copies may be resolved by a judicial recount under section 163 of the Revised Election Code but certainly, according to the Court, an *a priori* rejection on the basis of previous Comelec action is not justifiable.

G. *Time to seek Comelec action*

Time is of the essence in bringing actions relative to election cases. Thus an election contest based on the disloyalty or ineligibility of a municipal or provincial officer-elect must be filed within one week after the proclamation. A petition contesting the election of the same officer must be brought within two weeks from proclamation.

In *Aguam v. Comelec,*[94] the proclamation of Aguam was effected on November 20, 1967. The petition filed with the Comelec to annul the allegedly illegal and invalid proclamation was filed January 6, 1968. The Court held that the two-week rule in election contests does not apply. The election law does not provide a time limit within which a candidate may challenge the validity of a proclamation. Reviewing the various steps taken by respondent Balindong, the Court stated he cannot be guilty of laches in waiting until January 6 — at which time Aguam was already in office — to seek cancellation of the canvass and proclamation.

[93] *Supra,* note 70.
[94] *Supra,* note 89.

II. Canvass of Election Returns

A. *Powers of the Board*

Earlier reference has been made to guidelines in the canvassing of election returns. Issues on canvassing are intimately intertwined with the enforcement powers of the Comelec.

If a canvassing board is faced with election returns that are obviously manufactured, what steps should it take? In *Pacis v. Comelec*,[95] the Court reiterated the rule that a canvassing board will not be compelled to canvass returns which are obviously manufactured. However, when faced with such returns, it should not immediately disregard the votes represented by the doctored returns. The board should report the matter to Comelec. The Comelec shall then issue such order as would ascertain the existence of the genuine, authentic, and untampered election returns. In this case, both the municipal treasurer's copy and the Comelec's copy were allegedly tampered with. The Comelec could inquire into the copy held by the provincial treasurer or, as in *Mutuc v. Comelec*[96] and the 1967 case of *Cauton v. Sanidad*,[97] open the ballot box to retrieve the copy which is least susceptible of tampering. The Court also stated that the Comelec could summon members of the boards of inspectors, take evidence, and ascertain which are the genuine returns. Every effort should be taken to locate serviceable returns.

The second *Pacis v. Comelec*[98] case illustrates other measures to insure a valid canvass. The Comelec may order the board of canvassers to use Comelec's findings on the correct votes obtained. The Comelec may use NBI experts to determine which portions of a return are tampered and which are not tampered. The Comelec may instruct the board of canvassers to use only a portion of an entry — the one written in long hand and in words indicating the number of votes cast for a candidate, disregarding tampered portions of the same entry. The Comelec may invalidate a return which it finds was prepared at the point of a gun because this spurious return was no return at all.

The *Aguam v. Comelec*[99] decision illustrates the same search for the authentic or serviceable copy to the extent of opening the ballot box if necessary. And, as earlier mentioned, advance copies of election returns cannot be used in the canvass and cannot be the basis of a proclamation.

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[95] G.R. No. 28455, February 10, 1968.
[96] *Supra*, note 82.
[97] G.R. No. 25467, April 27, 1967.
[98] G.R. No. 29026, September 28, 1968.
[99] *Supra*, note 89.

In *French v. Comelec*,[100] two boards of canvassers came up with two different proclamations. The Polomolok, Cotabato board of canvassers refused to show up and to do its work so the Comelec supervisor constituted a substitute board which proclaimed French as mayor-elect. Later, the original board met and proclaimed Bayan as mayor-elect.

The Comelec annulled both canvasses and directed the original board to conduct a new canvass. However, the Comelec ignored findings of its own Supervisor that there was a tampering of the election returns after the substitute board had proclaimed French and issued a strange order — to use the election returns of the municipal treasurer as the basis of the new canvass, with the Comelec copy of the returns as a reference, and in case of discrepancy to resort to a judicial recount as remedy.

The Court ruled, that the Comelec must order the recanvass on the basis of the untampered copy in its (Comelec) hands. It also stated that the resort to judicial recount is improper where the returns have been tampered with or falsified after they left the board of election inspectors.

B. *Place of counting and canvassing*

The 1968 decisions also sustain the orders of the Comelec that the counting of votes, canvassing of returns, and proclamation of winners may be made outside of the places designated in the law and at a time long after that contemplated by statute.

The Revised Election Code provides that as soon as the voting is finished, the board of inspectors shall publicly count the votes cast in the precinct and ascertain the result. The law further states that the board shall not adjourn or postpone or delay the count until it shall have been completed. It also outlines a procedure where the chairman of the board of inspectors orally and publicly announces the results of the election while still in the polling place.[101]

In the case of *Alonto v. Comelec*,[102] the counting and tally in various precincts of Marawi City, Ganassi, Lumbatan, Malabang, and Wao, Lanao de Sur were made, not in the polling places but in camps of the Philippine Constabulary and not on election day but three days or more thereafter.

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[100] G.R. No. 28561, July 8, 1968.
[101] REVISED ELECTION CODE, secs. 144, 150, and 151.
[102] *Supra*, note 70.

The Court declared the opposition to such a count and tally as extreme and untenable by stating:

> "It requires no great efforts to understand that external circumstances may occasionally compel the transfer of the ballot boxes and inspectors to places of safety in order to avoid frustration of the popular will. Where political passions are rife and armed persons are running loose, adequate protection can not be afforded to the election officers in each and every precinct, because law officers would be spread out thin and their effectiveness nullified. It would be unrealistic to deny the Comelec the authority to provide adequate safeguards, to permit the results of the voting to be properly ascertained, free from threats and pressure, if not actual bloodshed. To require election officials to disregard their own safety, risk their lives and stick to their posts in the face of imminent violence would be not only extreme idolatry of the letter of the law but would tend to frustrate its primary end of ascertaining the true will of the people."

In the *Aguam v. Comelec*[103] case, canvass of returns and proclamation of the mayor-elect of Ganassi, Lanao del Sur were done in Marawi City.

In *Macud v. Comelec,*[104] canvass and proclamation for Lumba-Bayabao, Lanao del Sur were not only effected in Manila, but the canvassing board was made up of Comelec employees in Manila.

In *Tagoranao v. Comelec,*[105] votes were counted at Camp Keithley instead of the polling place and six days after the day of elections.

C. *Composition of Boards of Canvassers*

The composition of provincial, municipal, or city boards of canvassers is another aspect of election law which received a fair amount of attention in the 1968 decisions.

In the *Aquino v. Comelec*[106] case, the incumbent mayor, vice-mayor and councilors of Butuan City were all re-electionists in the 1967 elections. The Comelec, therefore, constituted a new board of canvassers using as first choices those listed in section 159 of the Revised Election Code.[107] However, a full board of canvassers could not be constituted.

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[103] *Supra*, note 89.
[104] *Supra*, note 88.
[105] *Supra*, note 73.
[106] G.R. No. 28392. January 29, 1968, 64 O.G. 9789 (Sept., 1968).
[107] Sec. 159. *Incapacity and substitution of provincial canvassers.* — In cases of absence or incapacity for any cause of the members of the provincial board of canvassers, the Commission on Elections may appoint as substitutes the superintendent of schools, the district engineer, the district health officer, the register of deeds, the clerk of the Court of First Instance, or the justice of the peace of the capital. In chartered cities the Commission may appoint the officers corresponding to those enumerated.

A question arose as to who should make appointments after the list in section 159 is exhausted. Should section 28 of the same code, which empowers the President to make such appointments apply?[108]

The Court held that it is the Comelec and not the President who should make such appointments. It stated that section 28 has become obsolete for this purpose since the enactment of Republic Act No. 599 on March 28, 1951. The decision in *Torres v. Ribo*[109] is to be understood to mean that the Comelec must appoint from among officials named in section 159 if they are available. But the decision does not preclude the Comelec from appointing other officials in order to complete the membership of the board of canvassers. The Comelec may appoint other officials of the city until the board of canvassers is fully constituted. Members of the board of canvassers are election officials. The members, even when they are councilmen, do not sit in their capacity as city officials but as election officials to perform functions specially provided by law. Since they are election officials, the Comelec is authorized to appoint them as "other election officials" under section 2 of Article X of the Constitution.

In *Pelayo v. Comelec*,[110] one question raised by respondent Tiongco was the validity of the appointment of City Judge Vicente Calanog as chairman of the city board of canvassers instead of Acting City Fiscal Raul B. Pichon. It was argued that while the Comelec may appoint substitutes as provided in section 159, acting City Fiscal Pichon was neither disqualified, absent, nor incapacitated.

The Court sustained the Comelec action regarding the appointment. It held that the policy of the Comelec in not allowing appointees of the Executive in an *acting capacity* to sit as members of the canvassing board is valid. These kinds of appointments are usually done a few months before election day, to ease out undesirable officials and put in more favored ones, which is not conducive to the holding of free, orderly, and honest elections.

The Court distinguished this ruling from the *Campos v. Comelec*[111] decision. In Campos, the acting provincial fiscal was automatically entitled

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[108] Sec. 28. *Disqualification to act on provincial boards and municipal councils.* — Any member of a provincial board or of a municipal council who is a candidate for office in any election, shall be incompetent to act on said body in the performance of the duties thereof relative to said election, and if, for such reason, the number of members should be unduly depleted, the President if it is a provincial or city office, and the governor if it is a municipal office, shall appoint any disinterested voter of the province, municipality or city concerned belonging to the political party of the incompetent member to act in his place on such matters.

[109] 81 Phil. 44 (1948).

[110] G.R. No. 28869, June 29, 1968.

[111] G.R. No. 28439, December 29, 1967.

to substitute in the canvassing board for the reason that he was the first assistant provincial fiscal and, therefore, first in line of succession. Fiscal Pichon is not similarly situated. The Davao City Charter states that the fiscal next in rank to the City Fiscal automatically performs the duties of the City Fiscal in the latter's absence, sickness, or inability to act or in case of temporary vacancy. Pichon was fourth assistant city fiscal, way below in the echelon of assistant city fiscals, when he was designated acting city fiscal. The appointment of the city judge was sustained.

In this case, the proclamation of the 10th councilor-elect was postponed. What should be the composition of the canvassing board that shall subsequently proclaim him? Should it be the newly elected and proclaimed set of city officials or should it be the old board of canvassers made up of substitutes under section 159?

The court ruled in favor of the old board.

The argument in favor of the newly proclaimed officials states that the term of office of the elected city officials who by law compose the board has expired. Consequently, their substitutes who made up the old board are no longer the members of the board.

The Court stated that the board of canvassers is a body entirely different and distinct from the Davao city council. The board of canvassers is created for a specific purpose. Its term of offices does not coincide with the term of office of the officials concerned. It terminates as soon as its functions are finished. It, therefore, retains its authority as a board until it shall have completed its functions and accomplished its purposes. The members may be public officers in another capacity. Yet, they are never *functus officio* as election officers until they have totally discharged their duties. The Court went on to compare the composition of the proposed new board, which was made up of newly elected officials with the old board, made up of career public officials who are not card-carrying party members. The Court stated that the latter carry the presumption of being impartial.

To avoid any misunderstanding that might arise from the *Santos v. Comelec*[112] doctrine, the Court stated that in *Santos,* the newly elected official members of the new board were directed to *properly* complete the canvass for mayor. The legality of the composition of the new board was never disputed. In *Pelayo,* it was precisely the composition of the board that was being questioned.

In *Pacis v. Comelec,*[113] a question of first impression came up.

[112] G.R. No. 16413. January 26, 1960.
[113] G.R. No. 28455, February 10, 1968.

A municipal councilor elected in the 1963 elections filed his certificate of candidacy for vice-mayor in the 1967 elections. Under the Revised Election Code, he was, therefore, considered resigned from the council as of the moment of filing.[114] The Provincial Governor appointed another person in his place as councilor. May the latter be substituted as member of the municipal board of canvassers for the 1967 elections?

The attack against the newly appointed councilors sitting in the board of canvassers is predicated upon the allegation that he is not a "qualified person belonging to the political party or faction of the officer whom he is to replace upon recommendation of the said political party or faction and who shall serve the unexpired term of office."[115]

The Court held that the appointment to the municipal council cannot be attacked in a collateral proceeding. We can infer from the decision that the reasons behind the appointment and the stripping of the public officer of his rights and prerogatives can be done only in a proper *quo warranto* proceeding.

The Court stated that the rules on replacement of members of the board of canvassers apply only when the member of the municipal council is a candidate. When the new councilor sat in the board of canvassers, he was a member of the municipal council and he was not a candidate for any elective office.

While the Court upheld the right of the new councilor to sit in the board of canvassers, the canvass and proclamation done by that board were nullified. It appears that three Liberal Party councilors who ran for reelection were replaced in the canvass board by Nacionalista party men. The facts indicate that the appointment of the susbstitutes was signed by the Comelec registrar of Sanchez Mira, Cagayan when the petitioner, with several heavily armed companions, visited the registrar's home and demanded that he sign the designation of substitutes. After signing the appointments, the registrar fled to Manila the same day in fear of his life. Being illegally constituted, the board could not validly canvass and proclaim.

The canvass and proclamation made by another board of canvassers which proclaimed the petitioner's opponent as mayor-elect were also invalidated because this second board of canvassers was likewise illegally constituted.

The Court ordered the constitution of a new municipal board of canvassers and gave other instructions on the new canvass.

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[114] Sec. 27.
[115] Rep. Act No. 5185 (1967), sec. 8.

III. Judicial Recount

A. *Requirements of Section 163*

Navarro v. Tizon,[116] *Ong v. Comelec,*[117] *Mutuc v. Comelec,*[118] *Dizon v. Tizon,*[119] *Macud v. Comelec,*[120] *Pacis v. Comelec,*[121] *Sanidad v. Saquing,*[122] *and French v. Comelec*[123] further illustrate when a judicial recount may be had and when Comelec action instead of a recount should be resorted to.

Section 163 of the Revised Election Code reads —

> "*When statements of a precinct are contradictory.* — In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected."

The copies of election returns referred to are the one copy deposited in the box for valid ballots, and the three copies sent to the municipal treasurer, provincial treasurer, and Comelec respectively.[124] *Navarro v. Tizon* states that the existence of erasures or superimpositions on any one of those four copies does not by itself justify a judicial recount. If the erasures are susceptible of reasonable explanation and do not constitute contradictions with what appear in the other copies, the remedy is not available.

Dizon v. Tizon illustrates the rule that the difference must affect the result of the election. Thus, a discrepancy of one vote which would not affect the result of the election cannot be the basis of a recount. The Court also emphasized that a judicial recount is only one cause of action, no matter how many precincts are involved. A petitioner cannot seek his redress piecemeal or in installments — asking for a recount in one precinct today, a recount in another precinct next week, in another

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[116] G.R. No. 28524, July 29, 1968.
[117] *Supra,* note 74.
[118] *Supra,* note 82.
[119] G.R. Nos. 28550-52, March 27, 1968. See another Dizon v. Tizon case, *supra,* note No. 71.
[120] *Supra,* note 88.
[121] *Supra,* note 95.
[122] G.R. No. 27951, May 28, 1968.
[123] *Supra,* note 100.
[124] See Rev. Election Code, sec. 152.

precinct on another week, and so on successively. The proceeding is summary and is designed to settle the causative controversy without unnecessary delay to identify the winner and have him proclaimed.

The *Dizon* case also states that the discrepancy must be brought to the attention of the board in the process of the canvass, otherwise the court would have no jurisdiction to order a recount. It also pointed out that an advance copy of a return sent to the municipal treasurer is not one of the four copies, a discrepancy among which would give rise to a recount.

In the second *Pacis v. Comelec* case, the Court ruled that a petition for judicial recount is a voluntary act under section 163. The petition asking the court to direct the board of canvassers to file a petition for judicial recount was, therefore, denied. The board cannot be compelled.

Mutuc v. Comelec states that where the three copies of the election returns are blank in that there is no entry regarding the votes received by the candidates, there is no discrepancy that would warrant a recount under section 163.[125] *Ong v. Comelec* and *French v. Comelec* repeat the rule that judicial recount is not the remedy where election returns were tampered with or falsified after they left the hands of the board of inspectors.

B. *Recount outside of Court's Territorial Jurisdiction*

In the earlier stages of the Cauton-Sanidad election controversy in Ilocos Sur, the Supreme Court had ruled in favor of Comelec power to order the opening of ballot boxes, retrieve the copies of the election returns in the boxes, use them for canvass purposes if they appear untampered with and authentic, and allow the aggrieved party to seek judicial recount if necessary.[126]

In the 1968 case of *Sanidad v. Saquing*,[127] the petitioner seeks implementation of the Supreme Court directive requiring the Court of First Instance judge to recount votes in 122 precincts. A novel question, however, presented itself when the petitioner asked that the recount be done by the respondent judge in the Comelec offices in Manila, and, therefore, outside of the territorial limits of the court's jurisdiction in Candon, Ilocos Sur.

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[125] *Supra*, see note 82 where the remedy is to get the fourth copy inside the ballot box and if it is blank, to count the ballots.

[126] Cauton v. Comelec, *supra*, note 76.

[127] G.R. No. 27951, May 28, 1968.

The Court ruled that the Ilocos Sur judge may recount in Manila. First, it reviewed the summary and speedy nature of the recount proceedings. It pointed out that under section 163 of the Revised Election Code, the judge performs a duty specially conferred by law separate and apart from the general exercise of his jurisdiction and only as a step in the election process leading to canvass and proclamation.

The Court stated that even in the exercise of regular judicial functions, a judge may be called upon to go outside of his territory. It cited replevin of personal property spirited out after the judge had acquired jurisdiction. It mentioned the preparation and signing of decisions under section 51 of the Judiciary Act, which under the circumstances of paragraph 2 may be done anywhere in the Philippines.

The Court stated that to grant the petition may indeed open the floodgates to abuse but almost any authority is subject to abuse. As temples of right, courts of justice will not be powerless to apply the appropriate remedies. The Court considered that the boxes are now in the Comelec offices in Manila. There were the problems of transportation, loss in transit, and the need for heavy security measures in Ilocos Sur. There was the possibility of an election contest in the House Electoral Tribunal in Manila. The recount in Manila would also be subjected to lesser political tension and passion.

IV. Minutes of Voting and Corrections in Form

Petitioner in the case of *Seriña v. CFI of Bukidnon*[128] filed a petition for certiorari with preliminary injunction and mandamus against the respondent court. The Supreme Court found no occasion to exercise its supervisory power over inferior tribunals because the matter had become moot and academic when the time for it to be considered came up.

On the issue of whether omitted information in the election return as to the total number of registered voters, the total number of ballots found in the compartment for valid ballots and others are mere "clerical omissions" that may be disregarded or rather are "substantial, material, and requisite omissions" which must first be completed by the Board of Inspectors before the municipal board of canvassers can proceed to the canvass of votes, the Supreme Court had this to say —

> "Inferior tribunals must likewise bear in mind that where the provisions of the Election Code as in Sections 142 and 162 are couched in

[128] G.R. No. 28511, August 22, 1968.

> mandatory form, the power does not exist for any court to distinguish between material and immaterial omissions. What the law decrees must be obeyed. It is as peremptory and as simple as that.[129]

V. COURT JURISDICTION VIS-A-VIS THE COMELEC

Once a court of first instance has acquired jurisdiction through the filing of an election protest, all questions relative thereto must be decided in the case itself and not in a separate proceeding before a different forum.

This general rule is illustrated in the case of *Reyes v. Reyes.*[130] On December 2, 1967, a petition was filed with the Comelec to annul the proclamation of Antolio Reyes as mayor-elect of Magallanes, Cavite. On December 6, the Comelec annulled and set aside the proclamation. Later on, the Comelec having found out that on December 4, the protestant had filed a petition for quo warranto and election protest with the proper court of first instance, reconsidered its December 6 resolution.

The Supreme Court stated that the filing of the two cases with the lower court, against a proclaimed candidate who already assumed office, gave the lower court exclusive jurisdiction. Confusion and conflict would arise if Comelec may still annul the proclamation and interfere with the election protest.

The case of *Tuburan v. Ballener*[131] gives an exception to the foregoing rule. To distinguish this case from the *Reyes v. Reyes* decision, the Supreme Court explained that in *Reyes v. Reyes,* there was clearly a deliberate intent to abandon the December 2 petition with the Comelec. There was a subsequent voluntary submission on December 4 of the same question to the court of first instance. A choice or option was open to the aggrieved party, with full knowledge of the fact that when he filed his election protest, the petition for annulment had already been lodged with Comelec.

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[129] The problem is really one of legislative draftsmanship. Sec. 142 of the Revised Election Code is specific on what items the board of inspectors should include in the statement of the minutes of voting. Sec. 162 is also clear that when some requisite in form has been omitted in the statements, the board of canvassers shall return them by messenger or by another expeditious means to the corresponding boards of inspectors for correction. The statements shall not be returned, however, for a recount of ballots or for any alteration of the number of votes set forth therein. If, as the Court says, sec. 142 is couched in mandatory form, everything required therein is material. Yet, sec. 162 is entitled "Material defects in form of the statements", thus, seemingly implying that there are defects that are material and there are defects that are not.

[130] G.R. No. 28476, January 31, 1968.

[131] G.R. No. 28751, August 30, 1968.

In *Tuburan,* however, the petitioner went to the Court of First Instance on December 26, 1967 only as a precautionary measure. He had to protect his rights because the period for filing a protest was due to expire the following day, December 27.

Tuburan sent his petition to the Comelec by personal courier on December 21. He had no knowledge whether the petition was actually filed or not. The uncertainties of travel between Cotabato and Manila and the fact that two successive holidays had already intervened gave him cause for apprehension. He did not want to lose his right to file an election protest, in the event his earlier petition failed to reach the Comelec.

The facts of these cases, however, will have to be closely distinguished from those cases where the Comelec does not lose its jurisdiction over an invalid canvass and proclamation and the Court of First Instance cannot interfere with the enforcement powers of the Comelec.

May a Court of First Instance pass upon and entertain a special civil action to prohibit municipal mayors, presumed to be partial to a congressional candidate, from appointing special policemen and agents with the sole purpose, so it is alleged, to terrorize voters and thus frustrate free and honest expression of popular will?

In *Zaldivar v. Estonzo,*[132] the Supreme Court stated that it may not. In denying this power, the Court issued a reminder on norms of judicial conduct, thus severely frowning upon the unusual celerity and dispatch with which the lower court granted *ex parte,* the preliminary injunction.

The Court stated that the judiciary should not be a co-participant in the enforcement of election laws. It pointed out that the literal language of the Constitution empowers the Comelec to have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and that it is hostile to a democratic system to involve the judiciary in the politics of the people. It added that it is not less pernicious if such intervention be dressed up in the abstract phrases of the law. The Court stated that chaos would ensue if the Court of First Instance of each and every province were to arrogate unto itself the power to disregard, suspend, or contradict any order of the Comelec; that constitutional body would be speedily reduced to impotence.

Macud v. Comelec[133] states that the writ of preliminary injunction issued by the Court of First Instance of Lanao del Sur in the

[132] G.R. No. 26065, May 3, 1968.
[133] *Supra,* note 88.

petition for judicial recount cannot be enforced against the Comelec, considering the rank and status of the issuing Court in relation to that of the Comelec.

VI. EXPIRATION OF TERM OF OFFICE PENDING PROTEST

The concern of the Supreme Court with the problem of "grab-the-proclamation and prolong-the-protest" is understandable when one reads about election cases which became moot while pending in court.

In *Agawin v. Cabrera,*[134] the case started with the November 12, 1963 elections in Pagsanjan, Laguna. The election contest involved many issues, among them fraud, corrupt practices, overspending, filing of the protestant's certificate of candidacy with the wrong office, and filing of protest outside the reglementary period. In the November, 1967 elections, Agawin and Cabrera faced each other again, Cabrera won and Agawin again protested. Having become moot the earlier case was dropped. One can legitimately wonder, of course, how long the 1967 protest will now take.

The situation in *Lofranco v. Jimenez*[135] is even more saddening. The appeal was dismissed because the election protest had become moot. The Court stated that the respondent-protestant is already dead and the term of the contested office has already expired. Respondent's counsel in the case had tried to prove that the case was not moot because, first it involved the right of Lofranco to the mayorship of Inabanga, Bohol[136] and second, the right of the deceased respondent to recover costs, expenses in the election protest, and damages because of deprivation of the office of mayor. The right to continue holding the mayorship had of course, become moot by November, 1967. The entire appeal including costs and damages was dismissed.

VII. CONTEMPT

In *Una Kibad v. Comelec,*[137] the Supreme Court issued an order enjoining the municipal board of canvassers from proclaiming the mayor. In spite of the restraining order, respondent Paniodiongan, without proclamation, assumed office as mayor. When asked to explain, he stated he did so because of public interest. Such conduct was found unjustified and he was punished for contempt.

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[134] G.R. No. 23855, April 25, 1968.
[135] G.R. No. 27583, January 30, 1968.
[136] De Mesa v. Mencias, G.R. No. 24583, October 29, 1966 illustrates how death does not terminate an election protest because of the deceased's right to keep the opponent out of an office he is not supposed to validly occupy. Also see Santos v. Secretary of Labor, *supra,* note 3.
[137] G.R. No. 28469, October 29, 1968.

VIII. Barrio Elections

The case of *Falcotelo v. Gali*[138] arose from the fact that Bagong Barrio of Caloocan City held two barrio elections in 1964 — one on January 12, and the other on January 26. The old barrio council had postponed the January 12 elections but the group of the petitioners proceeded with it. They now challenge the validity of the postponement, the January 26 elections, and the proclamation of another set of officials during the latter elections.

The main issue was the jurisdiction of the City Court of Caloocan over a case denominated *quo warranto* by the petitioners. The Caloocan court decided it had jurisdiction under section 8 of the Revised Barrio Charter but dismissed the petition on the ground that it is barred by the statute of limitations under sections 173 and 174 of the Revised Election Code.

On appeal to the court of first instance, the court dismissed the appeal on the ground that the city court below had no jurisdiction over *quo warranto* cases. The Supreme Court stated that the Court of First Instance erred in dismissing *the appeal* on account of lack of jurisdiction of the city court. Assuming that the premise of the Court of First Instance is correct, the proper step was to dismiss *the case* unless the parties agreed to the Court of First Instance's original jurisdiction, which respondents objected to.

The Supreme Court stated that section 8 of the Revised Barrio Charter is clear that *all disputes over barrio elections* shall be brought before the municipal court of the municipality concerned and that the decision is appealable to the court of first instance. The absoluteness of the statute giving jurisdiction over all disputes over barrio elections is evidence of the legislative intent to confer extraordinary jurisdiction upon municipal or city courts for the sake of prompt and inexpensive solutions to controversies arising from barrio elections.

The Court however ruled that whether the case is an election protest or a quo warranto action and whether original jurisdiction is with the court of first instance or the city court, it must be dismissed because it was filed out of time. Barrio officials are also municipal officials and actions must be filed within the same periods of time. A petition for quo warranto must be brought within one week after proclamation and an election protest two weeks after proclamation. In the present case, the respondents were proclaimed on January 26, 1964 but the case was commenced on March 17 or seven weeks later.

[138] G.R. No. 24190, January 8, 1968, 64 O.G. 10309 (Oct., 1968).

ADMINISTRATIVE LAW

One thing that emerges from a survey of the 1968 decisions in administrative law is the imperative need for a uniform administrative procedure act. There is need to provide minimum basic procedural requirements that must be uniformly observed by all agencies.

Unless the decisions are viewed in the light of this need for law reform, most of them continue to be the usual detailed excursions into minute and little known provisions of specific statutes and charters governing each particular agency.

The multiplicity of statutes that one has to wade through to determine safeguards and restrictions on such functions as agency rule making and administrative determination is evident in the decisions. Because of the variety of tasks performed by agencies, diversity in detailed procedures cannot be avoided. In fundamental procedures, however, there should be uniformity.

Within the established confines of the old and venerable concepts — cardinal primary rights, germane to the purposes of the law, issues of fact, exhaustion of administrative remedies, public interest, and others — the patient concern of the Supreme Court to set basic limits to the exercise of administrative power is clear. And yet, formal compliance with these judicially developed concepts is easy to prove. What is unseen from the surface is the subtle subversion, wittingly or unwittingly, of these concepts in the internal workings of administrative action.

In a few cases, this inner subversion of fair play, adequate notice, and adjudication by the proper officials is apparent in the decisions. In most cases, however, and especially in the tens of thousands that never reach the courts, it cannot and does not appear.

The absence of a uniform procedure act and the meek submissiveness of the typical citizen to the action of officialdom are tailor-made for the petty tyrants and bureaucrats who have fast proliferated in public office. Administrative agencies are powerful enough without the legal and social orientation inside agencies that weighs the stacks too heavily on the side of bureaucratic action, in favor of the prejudice of agency officials against the applicant, and the feeling that the officials are the government, that they are only doing their duty, and that they should be sustained in every way to accomplish the purposes for which their offices were created.

I. Rule Making

The delegation of rule making authority is usually given in broad terms which allow agencies to promulgate almost anything that they can justify as necessary to accomplish the purposes for which they were established. Except for the approval by a higher supervisor and the occasional requirement of publication in the Official Gazette, there is no method required in the exercise of rule making. In fact, there is no clear picture in agencies as to what is a rule. The distinctions between organizational, procedural, and substantive rules are generally ignored. Rules are not classified. Notice is not given before promulgation. Notice and hearing are not given when rules are changed.

A. *Rule making in the Bureau of Forestry*

Illustrative of the need for procedure in rule making is the decision in *Director of Forestry v. Muñoz.*[139] The broad power of an agency to issue a substantive rule and suddenly withdraw it, the effect of such agency discretion on individuals and corporations, and the fact that this procedure is deeply ingrained in Philippine administrative law are inferred from the decision.

Piadeco corporation claims to be the owner of 72,000 hectares of land in Rizal under a Spanish Titulo de Propriedad. It applied for and was granted registration as private woodland over 4,400 hectares. Later on, the Director of Forestry cancelled the registration and directed the surrender of the original certificate. It appears that this action came about because of stricter prohibitions on the cutting of trees within and around the Angat and Marikina watershed reservations.

The main issue revolved around the validity of Forestry Administrative Order 12-1 of July 1, 1941 as it was amended by Forestry Administrative Order 12-2 effective January 1, 1963. These administrative orders are issued pursuant to section 1829 of the Revised Administrative Code on registration of forest lands.

Section 1829 of the Revised Administrative Code does not describe with particularity the titles that may be registered with the Bureau of Forestry. Administrative authorities in the past considered titles issued under the Spanish regime as registrable. But as of January 1, 1963, all administrative orders allowing such registration were deemed repealed. This was done through the simple expedient of omitting one paragraph in the 1963 administrative order listing down registrable properties, the paragraph that reads — Titles granted by the Spanish

[139] G.R. No. 24796, June 28, 1968.

sovereignty in the Islands and duly recognized as valid titles under existing law.

In sustaining the validity of the rule and deciding against the claim of Piadeco, the Court stated that a rule shaped by jurisprudence is that when Congress authorizes the promulgation of administrative rules and regulations to implement a given legislation, all that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with but conform to the standards that the law prescribes.

The standard in the Revised Administrative Code is "regulations deemed expedient or necessary to secure the protection and conservation of the public forests in such manner as to insure a continued supply of valuable timber and other forest products for the future, and regulating the use and occupancy of the forests and forest reserves to the end."

It is true that a superficial assessment of Piadeco's pretensions of ownership indicate that there are some doubts regarding the extent of its rights flowing from the Spanish title. It is true that protection of watersheds is a noble objective. The issue, however, is on the rule making authority of the Director of Forestry. Administrative Order 12-1 and Administrative Order 12-2 are not orders merely clarifying or explaining the law. They are not instructions issued by the agency to subordinates to make them better perform their functions. These orders impose limitations on hitherto existing rights or privileges. In such matters as forest licenses which involve millions of pesos of property rights, can we say that this agency follows procedures consistent with the far-reaching effects of the legislative function that it is exercising?

B. *Rule making in the Bureau of Immigration*

How the right to life and liberty may depend on the application of detailed and obscure rules and regulations of an agency is illustrated by *Neria v. Commissioner of Immigration.*[140]

On July 9, 1961, the petitioner and his alleged mother and two younger brothers arrived by plane from Hongkong. He was armed with a certificate of registration and identity issued by the Philippine Consulate in Hongkong. Suspicious of the travel documents, the immigration inspector at the airport referred the matter to the Board of Special Inquiry. After a hearing on the filiation and paternity of the alleged citizen, the Board unanimously voted for admission, in its

[140] G.R. No. 24800, May 27, 1968.

decision dated August 2, 1961. The decision was next acted upon by the Board of Immigration Commissioners, who acting separately thereon and on different dates in August, 1961 approved admission by a two to one vote. The copy of the Immigration Board's decision was received by petitioner's counsel on September 4, 1961.

On January 24, 1962, the Secretary of Justice issued Memorandum Order 9 directing that the Board of Immigration Commissioners should meet, as one body, collectively on cases coming before it. All decisions appealed from the Boards of Special Inquiry and decided by the Commissioners acting separately, were set aside and ordered considered anew.

After a *motu proprio* review of the entire *Neria* proceedings, a decision to exclude the petitioner was made.

The case finally reached the Supreme Court as an appeal from an order of the Court of First Instance granting a writ of *habeas corpus* in favor of Neria. The *habeas corpus* questioned Neria's arrest and detention at Engineering Island.

The *habeas corpus* case hinges on the date of the finality of decision of the Board of Special Inquiry. Under section 27 of Commonwealth Act No. 613, the decision of that Board prevails and shall be final unless reversed by the Board of Immigration Commissioners within one year from the promulgation of the decision.

Arguments centered on whether the decision was promulgated on August 2, 1961 the date of the decision or on September 4, 1961 when received by petitioner. Counsel for the Commissioner of Immigration tried to justify their stand by a hair-splitting examination of individual words in the voluminous Immigration Rules and Regulations.[141] The Court stated that no amount of hair-splitting in regard to the word "rendition" and "promulgation" would convey different meanings. Promulgation is the delivery of the decision to the Clerk of Court for filing and publication.[142] Promulgation is the entry made by the clerk of a judgment or order in the book of entries of judgments made by said clerk.[143]

The Supreme Court decided the case on an interpretation of the Immigration Rules and Regulations as they govern proceedings before the Board of Special Inquiry.[144] It stated that under section 12 of

[141] The rules and regulations cover sixty-nine pages of the U.P. Law Center publication ADMINISTRATIVE PRACTICE AND PROCEDURE (1967).

[142] The Court made reference to Araneta v. Dinglasan, 84 Phil. 368, 433 (1949).

[143] Citing People v. Dinglasan, 77 Phil. 764 (1946) and a dissenting view of Justice Perfecto on pages 771-772.

[144] The Court scrutinized secs. 10, 11, 12, 13. Subdivision E Rule 1, 14, 16 Subdivision B Rule 2, and 17 Subdivision C Rule 2.

the rules, a promulgation may take place even before a decision is put in writing. Under section 14, promulgation may be effected before copy of the written decision of the board is furnished to an alien. The Court decided that August 2, 1961 was the date of promulgation and examined whether one year had elapsed from that date.

It appeared from the decision and the warrant of exclusion that the decision of the Board of Immigration Commissioners to exclude was made on August 2, 1962. The Supreme Court, however, looked at the minutes of the meeting and found out that the petitioner's case was acted upon and decided not on August 2, 1962 or the exact day, a year after the promulgation of the Board of Special Inquiry's decision, but on August 8, 1962. The grant of *habeas corpus* was sustained. How a decision made on August 8 happened to be dated August 2 is not explained in detail.

This survey would like to call attention to, at least, two features of the case. First, without Memorandum Order No. 9 of the Secretary of Justice, the decision of the Board of Immigration Commissioners which was arrived at separately by the members on separate dates would have become final. The memorandum order was, of course, not directed at the *Neria* proceedings. It was a memorandum of instructions to subordinates intended to bring about efficiency in the work of the Commissioners. Yet, nobody and least of all Neria and the others affected by that simple memorandum could doubt the substantive implications of this set of instructions. Second, the hair-splitting distinctions that the Solicitor General found in the voluminous Immigration Rules and Regulations and the fact that the Supreme Court based its decision on these rules, point to their importance. Yet, what procedures are followed when these are amended or changed.

It may be argued that immigration rules and adjudications fall under a special category. This may be true, but unfortunately the procedures of the Bureau of Immigration are sometimes better and perhaps even fairer than those of other agencies which do not fall under this "special category" of an agency dealing with aliens.

C. *Rule making in the Bureau of Posts*

In assailing the constitutionality of the Anti-TB Stamp Law, the petitioner in *Gomez v. Palomar*[145] argued that the statute is so broadly drawn that to execute it, the respondent postmaster-general had to issue administrative orders far beyond his powers. One of the disputed administrative orders provides that for certain classes of mail matters

[145] G.R. No. 23645, October 29, 1968.

such as mail permits, metered mails, business reply cards, etc. the five-centavo charge under the Act may be paid in cash instead of through the purchase of the anti-TB stamp. There is nothing in the statute that authorizes the collection of five centavos except through the sale of stamps but the Court held that such authority may be implied insofar as it may be necessary to prevent a failure of the undertaking. The authority given to the Postmaster General to raise funds through the mails must be liberally construed consistent with the principle that where the end is required, the appropriate means are given.

Another disputed portion of the administrative order states that mails deposited during the period August 19 to September 30 every year, in mail boxes without the TB stamp shall be returned to sender if he is known. If the sender is unknown, the mail shall be treated as non-mailable.

Again, the statute does not provide for disposition of mails which do not bear the Anti-TB stamp. The administrative order was, however, held valid because the law declares, "no mail matter shall be accepted in the mails unless it bears such semi-postal stamp". The Court stated that the order is but a re-statement of the law for guidance of postal officials and employees.

In effect, the Court stated that the rule making power was used only to give instructions to subordinates. Orders designed as instructions to subordinates, however, often affect the rights of the mailing public. Again what procedure governs the agency in the promulgation of its rules?

D. *Rule making in the Department of Finance*

In *Victorias Milling Co. v. Court of Tax Appeals,*[146] the petitioner tried to show that the assessments made by the provincial assessor are illegal and void. The basis of the alleged illegality was their contravening the mandatory provisions of an unnumbered Provincial Circular dated February 7, 1940 of the Department of Finance. Victorias argued that this unnumbered circular had the force and effect of law because it was promulgated pursuant to section 57 of the Assessment Law which states:

> "Sec. 57. *Promulgation of Rules by the Secretary of Finance.* — The Secretary of Finance shall promulgate rules and prescribe the blank forms to be used and procedure to be followed in carrying out the provisions of this Act."

[146] G.R. No. 24213, March 13, 1968.

The assessments were, however, held erroneous and not invalid on other grounds. The rule represented by the unnumbered circular was not fully analyzed in the decision.[147]

II. EXAMINERS AND THE INSTITUTIONAL DECISION

An important guarantee of administrative fair play that needs further study for possible application in the Philippines is the internal separation of functions. Closely related to this need is the problem of the institutional decision.

The absence of internal separation of functions and the use of institutional decisions may be justified in such agencies as the Social Security Commission and the Land Transportation Commission during the initial determination of claims or the grant of licenses. However, in agencies handling the applications of airlines, transportation companies, forestry concessions, banks, and other similar grants or franchises, internal separation and personal decision making by the commissioners or agency are mandatory. And in all agencies, cases that are appealed from the initial determination stage also call for the safeguards of internal separation and non-institutional decisions.

The usual procedure followed in agencies is to appoint hearing officers to receive evidence from the parties but the decision is signed and ostensibly prepared by the agency or commission.

There is no effort to separate the investigative, prosecuting, advisory, and decision-making personnel. They mix freely and consult with one another. In the intricate and over-staffed labyrinths of many agencies, pin-pointing the individual who actually prepares a decision would result in many surprises.

In many agencies and commissions, there are no regular hearing officers. Any lawyer will do. The decision is supposed to be the decision of the commission or agency but it cannot be traced to any person or unit, or even to the members of the commission because it is institutionalized — it is that of the entire agency. In benefit handling commissions, very often it is the result of many decisions put together routinely and arrived at after tens of thousands of similar applications.

The laxity or liberality of present statutes in the determination of who may be hearing officers is illustrated in an application decided by the Public Service Commission. It also illustrates the institutional nature of agency decision making in the Philippines.

[147] *Infra*, see for the discussion on exhaustion of administrative remedies. Note 1933.

A. *Internal separation of functions*

In *Rizal Light and Ice Co. v. Municipality of Morong,*[148] a non-lawyer division chief of the Public Service Commission conducted the hearing and investigation. The petitioner appeared through counsel and submitted his evidence. It entered into agreements on procedure with the hearing officer. When the decision of the Commission turned out to be adverse, it questioned the proceedings before the non-lawyer.

The Supreme Court stated that the law allows a division chief to hear and investigate a case filed before it if he is a lawyer.[149] But the objection to the delegation of authority to hear a case and to receive the evidence is procedural, not a jurisdictional point, and it is waived by the failure to interpose the objection at the proper time. Since the petitioner never raised any objection to the authority of the non-lawyer division chief to conduct the hearing, it should be deemed to have waived such a procedural defect. The Commission did not act without or in excess of jurisdiction in authorizing the division chief.

The second assignment of error in this case states that evidence upon which the Commission based its decision is insufficient and untrustworthy.

This evidence consists of inspection reports of engineers of the Public Service Commission who conducted the inspection of the petitioner's electric service. It was contended that the authors of the reports were not put to test by cross-examination and the petitioner failed to present its own side of the picture by giving its own evidence.

There is proof in the case that the counsel of the petitioner had, in a way, waived his right to cross-examine and his right to present evidence. If the issue were decided primarily on this point, it would have been reassuring. But the decision was mainly based on an aspect of our administrative law which calls for statutory reform.

The Supreme Court stated that it is not required to examine the proof *de novo* and to determine for itself whether or not the preponderance of evidence really justifies the decision. The Court merely ascertains whether or not there is evidence before the Commission upon which its decision might reasonably be based.

[148] G.R. Nos. 20993 & 21221, September 28, 1968.

[149] As amended by Rep. Act No. 723, the Commission may also, by proper order, authorize any of the attorneys of the legal division, or division chiefs, of the Commission, if they are lawyers, to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto.

It ruled that the inspection reports specify in detail the deficiencies incurred and the violations committed by petitioners resulting in inadequacy of the service. The Court found the reports sufficient to serve reasonably as bases of the decisions in question. But, then, it added — it should be emphasized that said reports are not mere documentary proofs presented for the consideration of the Commission but are the results of *the Commission's own observations and investigations* which it can rightfully take into consideration.

This is where the need for law reform comes in. The investigations of subordinate employees, no matter how talented and well meaning, are not the investigations of the Commission. When a judge makes his own observations and investigations, he conducts a personal and ocular inspection. When the Commission acts on reports and investigations other than its own, these are the reports of witnesses, not those of the Commission. And this is true even when those witnesses are employees working under the same Commission. An investigator can never be expected to approach his work with the impartiality of an adjudicating body. He does not submit reports that are evenly split in his handling of evidence, that might be criticized by his supervisors as wishy-washy, and that do not clearly decide a matter one way or another. Even in agencies where he is clearly told to stick to fact-finding and not make any recommendations, a reading of his report shall show that he did not only investigate. He also arrived at a decision.

B. *Decision making in the Bureau of Lands*

This need for law reform is further illustrated by *Pabiling v. Parinacio.*[150]

The case involves a conflict between a sales application and a homestead application over the same parcel of land.

The original decision of the Director of Lands was in favor of the petitioner Pabiling. Upon appeal by the respondent to the Secretary of Agriculture and Natural Resources, the decision of the Director was reversed. Pabiling filed a civil action for certiorari with the Court of First Instance but the case was decided against him.

When the case reached the Supreme Court, it ruled that the decision of the Director of Lands is conclusive upon questions of fact and not subject to review by the courts if affirmed by the Secretary of Agriculture and Natural Resources and supported by substantial

[150] G.R. No. 22682, July 23, 1968.

evidence. The Secretary has control over the Director, whose decisions must accordingly yield to those of the Secretary.

It was argued that the findings of fact made by the Director should control. Petitioner stressed that these findings are more weighty than those of the Secretary because the former had observed the behaviour of witnesses whom the Secretary has not seen.

The Court pointed out that the testimony was taken in the presence of *neither the Director nor the Secretary but before subordinate officers of the Bureau.* (Italics supplied)[151]

The Court stated that a decision of the Director is conclusive upon questions of facts and not subject to review by the courts if affirmed by the Secretary and supported by substantial evidence. And we can infer from the decision that where the case is not affirmed, but is instead reversed and set aside, the reason for the superiority of the Secretary's decision is even stronger.

The Court added that even if the Secretary had, hypothetically erred in the appreciation of the relative veracity and weight of the testimony of the witnesses, such would not render the Secretary guilty of grave abuse of discretion amounting to lack of jurisdiction warranting the issuance of the writ of certiorari.

III. Findings, Reasons, and Opinions

A. *Form and contents of decision*

In *Serrano v. Public Service Commission*,[152] the petitioner assailed non-compliance with the constitutional provision that no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law upon which it is based.[153]

The Court first emphasized that the Commission is not a court of record. It repeated the rule that the Commission is not a judicial tribunal, its function being limited and administrative in nature.

It, however, ruled that the non-inclusion of the Commission within the purview of the constitutional provision does not justify summary disposition of an application in the manner followed by the Commission in this case. Reference was made to the *Ang Tibay* ruling[154] where

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[151] The decision does not indicate how these subordinate officers were in turn examined and cross-examined when they submitted their findings to the Director. We believe we can safely assume however that, as in the Rizal Light and Ice Co. case, the findings of the subordinate officers were also equated with findings of the Director himself..

[152] G.R. No. 24165. August 30, 1968.

[153] Art. VIII, sec. 12.

[154] Ang Tibay v. Court & Indusrial Relations, 69 Phil. 634 (1940).

it was made clear that an administrative tribunal possessed of quasi-judicial powers cannot ignore or disregard the fundamental and essential requirements of due process, even as it is freed from the rigidity of certain procedural requirements.

The requirement not followed in the case was — quasi-judicial tribunals should in all controversial questions render their decisions in such a manner that the parties to the proceedings can know the various issues involved and the reasons for the decisions rendered. In this case, the Commission did not even bother to refer individually to petitioner and state why the application was dismissed or denied.

Reference was also made to the earlier decision in *Philippine Rabbit Bus Lines v. Gabatin.*[155] Justice Fernando who penned that decision made a study of the decisions covering a 45 year period. He found out that the Court accords deference to findings of fact of the Commission unless it could be shown that evidence in support thereof is lacking. The decision states that it is all the more essential that each and every application should be considered by the Commission strictly on its merits and the relevant facts in support of an order ruling, or decision be carefully inquired into and clearly set forth. Otherwise, the exercise of the power of review of the Supreme Court would be reduced to futility. Such an arbitrary fiat as the denial or dismissal of an application without any statement as to why under the evidence such a result is called for is plainly bereft of support in law. Even if there was a lack of interest or failure on the part of an applicant calling for a dismissal of his petition such a conclusion must find support in the competent evidence before the Commission and must be so indicated in the order.

The failure of the Court of Industrial Relations to rule on monetary claims was declared a denial of due process in the *Gracilla v. CIR* case.[156] The analogy with the *Serrano v. Public Service Commission* case[157] was stressed by the Court. In both cases there was a failure to respect the cardinal primary right of the petitioner to have his application or claim decided in such a manner as to inform him, not only of the issues involved, but the reason for the decision, which necessarily would require a finding of fact. The Court stated that the gravity of such a failing is underscored not only by deprivation of a right to which the petitioner is entitled, but also by the obstacle placed on the responsibility entrusted to the Supreme Court of reviewing decisions and orders of these administrative agencies. Applications and claims should be considered strictly on their merits and the

[155] G.R. No. 24472, July 31, 1968.
[156] G.R. No. 24489, September 28, 1968.
[157] G.R. No. 24165, August 30, 1968.

relevant facts in support of an order, ruling or decision carefully inquired into and clearly set forth.

In this case, the petitioner objecting to his dismissal as security guard of the other respondent Fuller Paint Manufacturing Co. filed a complaint with the CIR for reinstatement, back salaries, overtime pay, and vacation and leave credits. The CIR dismissed the complaint for lack of merit. The decision completely ignored the monetary claims.

IV. Agency Powers and Duties

A. *Jurisdiction of the Public Service Commission*

Jurisdiction of the Public Service Commission vis-a-vis the regular courts is examined in *Batangas Laguna Tayabas Company v. Cadiao.*[158] The petitioner seeks to restrain the Public Service Commission from acting on the request of Eastern Tayabas Bus Company for the issuance of plates covering units involved in the lease agreement between the two companies.

The Supreme Court distinguished between an action on the lease agreement and a petition to register trucks that will operate on public service lines. It stated that the Public Service Commission cannot act on an application which involves the resolution of a dispute of the parties as to the terms of a lease agreement. That would amount to exercising functions of a purely judicial tribunal. It has no jurisdiction over the private aspect of the lease agreement, the private rights of parties in their relations to each other as lessor and lessee.

But where the matter involves a public service or utility, the Commission has jurisdiction. Where the petition is to acquire and register the units or trucks required to operate the lines of the Eastern Tayabas Bus Co. after the latter had decided not to renew or extend its lease contract with Batangas Laguna Tayabas Bus Co., the matter is cognizable by the Public Service Commission. The Commission is the only entity empowered to withdraw the certificate of public conveyance from a claimant, transfer it to another, or grant a new certificate. *The Commission was allowed to go ahead.*

The nature of the functions and limit of jurisdiction of the Public Service Commission was again examined in the *Gray v. Kiungco*[159] case involving a dispute between operators of motorized pedicabs and autocalesa operators of Tacloban City. The Tacloban municipal board enacted a city ordinance prescribing rules and regulations for the operation and maintenance of motorcabs, regulating the occupation of

[158] G.R. No. 28725, March 12, 1968.
[159] G.R. No. 25222, September 27, 1968.

motorcab drivers, providing penalties for violation thereof and for other purposes. Established operators of AC vehicles persuaded the Land Transportation Commission Registrar to seize pedicabs and suspend their operations on the theory that the city ordinance was void. When the CFI judge issued an injunction in favor of the pedicab and motorcab operators, his jurisdiction was questioned on the ground that the operation of motor vehicles is within the exclusive jurisdiction of the Public Service Commission. The Supreme Court stated that the Public Service Commission is not a judicial tribunal. Its functions are limited and administrative in nature. It has only such jurisdiction and power as are expressly or by necessary implication conferred upon it by statute. The validity of an ordinance prescribing rules and regulations for the operation and maintenance of motorcabs is beyond the Commission's jurisdiction. In other words, the issue is not whether respondents should be issued franchises to operate motorized pedicabs or not. The issue is validity of a city ordinance.

B. *Jurisdiction of the Customs Bureau*

In *Asali v. Commissioner of Customs*,[160] five sailing vessels and their cargo were forfeited for smuggling activities. The interception and seizure was on the high seas and it was alleged that importation, which gives jurisdiction to the Commissioner of Customs, had not yet begun.

The Court stated that the jurisdiction of the Commissioner to apprehend and seize vessels on the high seas may be sustained under Article 2 of the Revised Penal Code taken with section 1363 of the Revised Administrative Code and well settled doctrines of international law.

De la Cruz v. Court of Tax Appeals[161] affirms the jurisdiction of the customs bureau over all customs laws and other laws relating to customs commerce and navigation.[162] Another *De la Cruz v. Court of Tax Appeals* case[163] reiterates the powers and duties of the Bureau of Customs. It states that the enforcement of section 1363 of the Revised Administrative Code and other matters arising under customs laws and other laws administered by the bureau, including seizure and forfeiture proceedings are placed under the authority of the Bureau of Customs. It has the power to decide said matters subject to review by the Court of Tax Appeals.

[160] G.R. No. 24170, December 16, 1968.
[161] G.R. Nos. 23335 & 23452, February 29, 1968.
[162] The laws cited are provisions of Chapter 39 of the Revised Administrative Code. The decision also covers rulings on several circulars promulgated by the Central Bank.
[163] G.R. Nos. 23334 and 23451, February 29, 1968.

C. *Jurisdiction of the Bureau of Forestry*

R. B. Industrial Development Co. v. Enage[164] is a case on the regulation of transfers of timber licenses by the Bureau of Forestry, a transfer from one Kittilstvedt to Eastern Timber Corporation.

The Court stated that where the law places in an administrative office the power to determine particular questions or matters upon the facts to be presented, the jurisdiction of such office shall prevail over the courts. For when Eastern Timber Corporation had withdrawn its complaint with the Bureau of Forestry, it may not go to courts of justice which have no jurisdiction to approve the alleged transfer and to direct the issuance of the license in its favor. Whether or not Industrial's timber license should be cancelled and a new one issued in Eastern's name in lieu thereof is one, upon the facts of record, beyond the reach of courts. Section 1816 of the Revised Administrative Code vests it in the Bureau of Forestry.

D. *Jurisdiction of Commissioner of Internal Revenue*

In *Commissioner of Internal Revenue v. Villa*,[165] a taxpayer was subjected to a deficiency income tax assessment for 1951, 1952, 1953, 1954, and 1956 and deficiency residence tax from 1951 to 1957. Without contesting the assessments, he filed a petition for review with the Court of Tax Appeals. The tax court took cognizance of the case and rendered judgment, reducing the assessments.

The Supreme Court stated that this was error on the part of the tax court. It defined the Court of Tax Appeals as a court of special jurisdiction with exclusive appellate jurisdiction to review by appeal the decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes. . . .[166] Where the taxpayer appealed from the assessment without previously contesting the same, the tax court had no jurisdiction to entertain the appeal. "Decisions" must be interpreted to mean the decisions of the Commissioner on the protest of taxpayers against the assessments and does not signify the assessment itself.

E. *Jurisdiction of Foreign Affairs Officers*

Board of Immigration Commissioners v. Go Callano[167] may be compared to *Pabiling v. Parinacio*[168] in the degree of control that a

[164] G.R. No. 27741, July 29, 1968.
[165] G.R. No. 23988, January 2, 1968.
[166] Rep. Act No. 1125 (1954), sec. 7.
[167] G.R. No. 24530, October 31, 1968.
[168] *Supra*, note 150.

superior officer has over the decisions of a subordinate, where both are administrative agencies.

The evidence indicates that the proceedings conducted by the Philippine consul general in Hongkong and the Special Board of Inquiry, both of which resulted in a definite finding that the Go Callano brothers are the illegitimate children of Emilia Callano, a Filipino and are, therefore, Filipino citizens entitled to travel direct to the Philippines and to remain within the territorial jurisdiction of the Republic, are in accordance with the norms and regulations followed in the conduct of like proceedings. The Court stated that they cannot be nullified by the Department of Foreign Affairs nor the Board of Immigration Commissioners summarily and without giving the parties concerned an opportunity to be heard.

Although the foreign service is under the supervision of the Department of Foreign Affairs, this does not necessarily mean that the Department Secretary takes the place of the consular officials abroad in the matter of issuance of passport visas, for the Secretary cannot relieve them of their responsibility under the law.

The Court stated that the petitioners are citizens because of their relationship with their mother. Their status is not conferred on them by the documentation by the consulate in Hongkong nor the findings of the Board of Special Inquiry in Manila. Whatever defects there are in the proceedings before the consulate and the board of inquiry cannot affect their status. Even if they are not properly documented, they cannot be excluded as aliens because they are citizens.

F. *Jurisdiction of City Engineer*

Director of Lands v. Court of Appeals[169] defines the duty of the City Engineer in the issuance of building permits.

Respondent Lorenzana was the successful bidder in the public sale of a quonset hut administered by the Director of Lands. The hut was built on land which she had earlier leased from the occupant Manila Railroad Company and which lease was subsequently approved by the Bureau of Lands. Sometime after a fire destroyed the quonset hut, Lorenzana started construction of a three storey building on the lot. Construction was already well advanced when the City Engineer, acting upon repeated representations of the Bureau of Lands, ordered suspension of construction work and threatened to revoke the building permit in case of non-compliance. The trial court ruled in favor of Lorenzana. The Director of Lands decided to appeal but the City Engineer did not.

[169] G.R. No. 21059, July 29, 1968.

The Court held that it is the ministerial duty of the City Engineer to issue a building permit when the application and the plans are in conformity with the requirements of building laws and ordinances. As long as there is no violation of building ordinances in the process of construction, the City Engineer has no ground to suspend a building permit already issued. Suspension or revocation of permit without cause would be an arbitrary act and an abuse of discretion.

The demolition or not of the construction is a question that should not be litigated in this case which concerns only the building permit. The Court stated that the right to lease and occupy the lot on which the building stands should be threshed out in a separate action.

V. Judicial Review

A. *Review of decisions of the President*

The *Palanan Lumber and Plywood Co. v. Arranz* decision[170] revolves around the power of a court of first instance to review the legal correctness of a decision of the Office of the President which split a 50,000-hectare forestry concession between two corporations.

The original decision of the Director of Forestry was to award the 50,000 hectares in favor of Palanan Logging. After a motion for reconsideration, this decision was set aside and 25,000 hectares were awarded to Palanan Lumber, without prejudice to the disposition of the remaining 25,000 hectares to Palanan Logging. On appeal to the Secretary of Agriculture and Natural Resources, the entire concession was given to Palanan Logging. The other company appealed to the President. In an order of the Executive Secretary, "By authority of the President", the two corporations were given 25,000 hectares each.

Palanan Logging brought an action before the Isabela Court of First Instance alleging illegality and abuse of discretion in the rendering of the President's decision.

The Supreme Court stated that the provincial courts of first instance can take cognizance of cases involving judicial review of administrative decisions where the sole issue before the Court is whether the decision of the respondent public officials was legally correct or not. A decision regularly reached by competent executive officials, in a matter within their jurisdiction carries with it a presumption of regularity and validity that is not to be lightly brushed aside without giving a previous hearing to the deciding functionaries out of deference and courtesy due to representatives of a coequal and coordinate department.

[170] G.R. No. 27106, March 20, 1968.

It added that it is a well settled principle that findings of fact of executive officials in matters within their jurisdiction are not subject to review or modification by the Courts in the absence of arbitrariness or grave abuse of discretion.

Where the trial court had no jurisdiction to control the actions of the national officials who are outside its districts, the petition filed in said court did not contain averments of fact sufficient to constitute a cause of action, and preliminary injunction was issued *ex parte,* there was grave abuse of discretion. Certiorari was the appropriate remedy.

The concurring opinion of Mr. Justice Fernando is quite enlightening in its call for law reform. It states —

> "It is true that there is no specific statutory provision that negates the power of the courts of first instance to pass upon the validity of an order of the Executive Secretary under the above circumstances. It is equally true, however, that they are without jurisdiction over several administrative agencies, of a much lesser rank than the Executive Secretary, acting by authority of the President. Mention may be made of the Public Service Commission, the Securities and Exchange Commission, Social Security Commission, Patent Office, even a regional hearing officer of the Department of Labor.
>
> The principle that sustains such an obstacle to courts of first instance possessing such competence, in the case of the above administrative agencies, more than suffices to require that a court of higher category be vested with the attribute to perform the highly delicate task of overturning what in effect is a Presidential decision on a matter where no factual considerations ordinarily intrude. Respect for a coordinate branch reinforced by the traditional courtesy that marks inter-departmental relations, to my mind calls for legislation of such character, assuming that on such a delicate matter judicial legislation cannot supply what is undeniably a glaring omission."

B. *Substantial evidence rule*

In *Laguna Transportation Employees Union v. Laguna Transportation Co., Inc.*,[171] the Court of Industrial Relations dismissed, after a trial on the merits, a suit for unfair labor practices.

On appeal, the Supreme Court sustained the CIR decision after reviewing the nature of the evidence supporting the findings of facts. It stated that the Supreme Court in reviewing the decision of the CIR is guided by the substantial evidence rule which states that the "findings on the weight of evidence by the CIR are conclusive" even in the presence of conflicting evidence. Judicial review is narrowed down to an inquiry as to whether the findings of fact are supported

[171] G.R. No. 23266, April 25, 1968.

by substantial evidence. In answer to the petitioners' argument that their evidence was more than preponderant to carry the day for them, the Court stated that it is not supposed to be guided by the rule of preponderance of evidence; it is not to pass upon the weight of evidence. Since by substantial evidence, valid causes for dismissal exist, then no unfair labor practice may be tagged upon the company.

In *Vivo v. Montesa*[172] the Supreme Court held that the Court of First Instance is without jurisdiction to restrain the deportation proceedings of respondents Calacdays. These proceedings are within the jurisdiction of the Immigration authorities under sections 29 and 37 of the Philippine Immigration Act. That jurisdiction is not tolled by a claim of Filipino citizenship where the Commission has reliable evidence to the contrary and the commission should be given opportunity to determine the issue of citizenship before the courts interfere in the exercise of the power of judicial review of administrative decisions.

C. *Presumption on performance of official duty*

In *Philippine Air Lines v. Civil Aeronautics Board*,[173] the petitioner questions the grant of provisional authority to the Filipinas Orient Airways, Inc. to operate domestic air services.

One basis of the petition for certiorari was the allegation that the respondent board had no evidence before it that would have justified the granting of the provisional authority.

The Court answered this by saying that it had no more than PAL's assertion and conclusion as against the finding of CAB that Fairways had established *prima facie* its fitness, willingness, and ability to operate the services applied for and the public need for more transportation services. The Court also mentioned the legal presumption that official duty has been duly performed.

The Court stated that such presumption is particularly strong as regards administrative agencies, like the CAB, vested with quasi-judicial powers, in connection with the enforcement of laws affecting particular fields of activity, the proper regulation and/or promotion of which and grasp of the overall conditions relevant to said field, obtaining requires a technical or special training, aside from a good knowledge in the nation. It added that the consequent policy and practice underlying our Administrative Law is that courts of justice should respect the findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly,

[172] G.R. No. 24576, July 29, 1968.
[173] G.R. No. 24219, June 13, 1968.

manifestly and patently insubstantial. This, in turn, is but a recognition of the necessity of permitting the executive department to adjust law enforcement to changing conditions, without being unduly hampered by the rigidity and the delays often attending ordinary court proceedings or the enactment of new or amendatory legislations.

On the issue of due process and form of the decision, the Court pointed out that this is but an interlocutory order prior to the rendition of a decision.

D. *Findings of fact*

In the *Philippine Rabbit Bus Lines v. Gabatin* decision adverted to, the Court declined to entertain on appeal the attack on the appellant's financial capacity. It stated that the findings of the Public Service Commission thereon are essentially factual determinations which cannot be disturbed unless patently unsupported by evidence. It then reiterated the well settled rule that the findings and conclusions of facts by the Public Service Commission after weighing the conflicting evidence adduced by the parties in public service cases are binding on the Supreme Court and will not be disturbed unless they appear not to be reasonably supported by evidence.

In *Balmonte v. Marcelo*[174] the Court stated that the question of notice, collusion, and fraud being issues of fact, the findings thereon by the competent executive officials are conclusive upon the courts, not subject to judicial review in the absence of a showing that the decision was rendered as a result of fraud, imposition, or mistake other than error of judgment in estimating the evidence. It reiterated that this is a well established and reiterated doctrine.[175]

In *Robles v. Blaylock*,[176] the Court sustained the findings of the Public Service Commission that there was need for increased taxicab services in a developing town like Olongapo, that public convenience calls for healthy competition, and that the petitioner had financial capacity for only 10 additional units instead of the 35 units he asked for.

But apart from these findings, the Court gave a procedural *coup de grace* when it added that to perfect an appeal to the Supreme Court from a final decision of the Public Service Commission, it is necessary to file with the Commission a notice of appeal within a period of 30 days from notice of such award, order, or decision.

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[174] G.R. No. 22240, November 27, 1968.

[175] Ortua v. Singson, 59 Phil. 440 (1934); De Guzman v. de Guzman, 104 Phil. 24 (1958); Julian v. Apostol, 52 Phil. 422 (1928); Afafara v. Mapa, 95 Phil. 125 (1954).

[176] G.R. Nos. 24123-26, March 27, 1968.

The petitioner in *Central Taxicab Corporation v. Public Service Commission*[177] had 88 units of taxicabs and applied for an additional 200 units. When the application was denied, he alleged that the Commission's action was arbitrary, discriminatory, and without legal basis.

The Court cited the general rule that the qualification or disqualification of an applicant is determined by the evidence submitted to the Commission and the latter's findings on this matter deserve the respect of the appellate court. However, the Court stated that the rule on finality of factual findings of the Commission is not without exception. Where the factual findings are not supported by substantial evidence or in reaching a conclusion, the Commission committed grave abuse of discretion, the findings of facts may be modified or ignored.

In this case, the Court found that the Commission had a policy of denying applications of old operators who have speculated and sold any number of units operated by them. But exceptions were made in the case of operators who, after parting with some units were able to acquire more units than those sold. They were not considered engaged in the trafficking of certificates of public service and were given additional units. The Court found the denial of the application not supported by, if not contrary to, the evidence. The explanation on the sale of five units in 1950 and the subsequent acquisition of 45 other units negatived any charge of speculation in public service utilities. The Commission was reversed and ordered to authorize an additional 15 units.

In *Go Kiong Ochura v. Commissioner of Immigration*,[178] the respondent commissioner found an absolute lack of evidence to establish the filiation of the applicants to their alleged parents. He issued a warrant of exclusion from the country.

Eventually, the applicant brought the proceedings to the Court of First Instance. The decision of the lower court found that a preponderance of evidence proved the filiation of the petitioners because the decisions of the Board of Commissioners are only based on contradictions found in the petitioners' written statements before the Philippine Consul in Hongkong and those given before the Board of Special Inquiry. The court, therefore, issued the writ and restrained the execution of the warrants of exclusion.

On appeal to the Supreme Court, the lower court was reversed. The main ground was conclusiveness of findings of facts. The Court

[177] G.R. No. 24289, February 17, 1968
[178] G.R. No. 21423, January 31, 1968.

ruled that executive decisions are conclusive on questions of fact and are not subject to review by the courts in the absence of fraud, imposition, or mistake other than error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of evidence, so long as there is some evidence upon which the findings in question could be made. The Court stressed that with particular reference to immigration cases, it has long repeatedly and invariably applied the same criterion and held that judicial review must be predicated upon a showing of gross abuse of authority, abuse of discretion, or error in the application of the law. It is settled by a long line of decisions that courts should not disturb the conclusions of facts of immigration authorities in matters which are within their competence, whenever there is some evidence in support of such conclusions.

In *Gonzaga v. Vivo*,[179] four persons alleged to be brothers landed in Manila. They were admitted by the Board of Special Inquiry as citizens but this decision was overruled by the Board of Commissioners and they were ordered arrested and excluded.

Acting on a petition for prohibition with preliminary injunction, the Court of First Instance restrained the Commissioner from arresting and deporting them. The Court later found that the petitioners had sufficiently established their Filipino citizenship.

The Supreme Court stated that the appeal from the Court of First Instance is in reality a review of the decision of the Board of Commissioners. It stated that the court's function is only to ascertain whether the findings of the board are in accord with law, free from fraud or imposition, and whether they find any reasonable support in the evidence.

On the action of the Court of First Instance, it stated that the Court exceeded its powers of a reviewer of the findings of an administrative body for it resolved a factual issue on something never presented before the administrative body. The petitioner's alleged citizenship could not be stipulated upon after they were excluded from the country by the Board of Commissioners on the ground that they failed to establish their alleged citizenship.

This attitude of the Supreme Court towards factual determinations of administrative agencies is reflected in other 1968 cases.

Tanglaw Ng Paggawa v. Court of Industrial Relations[180] states that the issue — was the conduct of the employer discriminatory and intended

[179] G.R. No. 27030, March 6, 1968.
[180] G.R. No. 24498, September 21, 1968.

to prejudice the union by aiming to reduce its membership? — was one of fact which was answered by the CIR in the negative. This finding of fact made by the industrial court being reasonably supported by the record is binding upon the Supreme Court.

In *Republic Telephone Co. v. Philippine Long Distance Telephone Co.*,[181] *Caltex Philippines v. Republic Telephone Co.*,[182] and *Philippine Long Distance Co. v. Republic Telephone Co.*,[183] the Court held that the nature and condition of the telephone system which is the subject of the controversy is a factual issue. The Court noted that the accuracy of the description of the system and how it operates are not being challenged. The appellants confine their attacks to the conclusions drawn by the Public Service Commission from such facts. The Court ruled — to meet the factual issues being raised by appellants, we can point to the well settled rule that conclusions of facts by the Public Service Commission shall be respected as long as they are supported by the evidence.

In *Duque v. Cruz*,[184] the issue as to whether a piece of land forms part of the public domain subject to disposition or part of a reservation for the Baguio General Hospital was factual in nature. The Court stated that the Director of Lands has direct executive control of the survey, classification, lease, sale, or any other form of concessions or disposition and management of the lands of the public domain and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Natural Resources.[185]

In *Laguna College v. Court of Industrial Relations*,[186] the factual issue was the classification of employees into rank and file or supervisors for purposes of membership in an appropriate bargaining unit; the Supreme Court found substantial support for the conclusion of the respondent and sustained it.

In *NAWASA v. Kaisahan At Kapatiran Ng Mga Manggagawa at Kawani Ng NAWASA*,[187] the nature of the agreement on cost of living allowances was factual. Since it was supported by substantial evidence in the decision of the industrial court, it was held not subject to review. The Supreme Court added that the determination of the factual issues depends upon the relative credibility of witnesses presented before the CIR. The findings are, therefore, not subject to review.

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[181] G.R. No. 21070. September 23, 1968.
[182] G.R. No. 21074, September 23, 1968.
[183] G.R. No. 21075, September 23, 1968.
[184] G.R. No. 25132, September 25, 1968.
[185] Citing Com. Act No. 141 (1936), sec. 4
[186] G.R. No. 28927, September 25, 1968.
[187] G.R. No. 25328, October 11, 1968.

In *Lim Kiah v. Kaynee Company*,[188] the ownership and use of a trademark was the factual issue. The Court stated that the findings of fact of the Director of Patents are binding upon it and not subject to inquiry in the absence of any showing of grave abuse of discretion.[189]

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. *Remedies before the Social Security Commission*

May administrative jurisdiction be challenged before exhausting administrative remedies? In social security, the answer is no. In *Insular Life Assurance Co. v. Social Security Commission*,[190] the petitioner sought declaratory relief in the Manila Court of First Instance as to whether its agents and underwriters are "employees" under Circular 34 of the Social Security System.

The Supreme Court ruled that by mandate of section 5(b) of the Social Security Act, as amended, any matter in dispute that concerns the Social Security Commission may not be properly entertained before the courts until all remedies in the Commission have been exhausted.

As presently worded, the law is clear in vesting the Commission power to pass upon "any disputed matter" that has a bearing on the application of the Social Security Act. To except petitions for declaratory relief from the application of section 5 of the Act would render it easy for parties to circumvent said provision on appeals from decisions of the Commission and it would practically strip the Commission of its semi-judicial powers. Any party involved with the Social Security System on any deed, will, contract or other instruments, statute, executive order, or regulation, can always petition the Court of First Instance for declaratory relief to determine questions of construction or validity arising therefrom, instead of having first a decision on the matter from the Commission and then appealing to appellate courts.

B. *Submission to the Commissioner of Land Registration*

In *Almirol v. Register of Deeds of Agusan*,[191] the Court stated that mandamus does not lie to compel the Register of Deeds to register the deed of sale in question, because pursuant to the provisions of section 4, Republic Act 1151, where any party in interest does not agree with the Register of Deeds, the questions should be submitted to the Commissioner of Land Registration. The decision of the Commissioner shall be binding upon all Registers of Deeds. Hence, this administrative remedy must be resorted to before there can be recourse to the courts.

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[188] G.R. No. 24802, October 14, 1968.
[189] Citing the rule in Chung Te v. Ng Kian Giab, G.R. No. 23791, November 23, 1966.
[190] G.R. No. 23565, March 21, 1968.
[191] G.R. No. 22486, March 20, 1968.

While ruling that the proper step was to exhaust administrative remedies, meaning go to the Commissioner, the Supreme Court also stated that the sincere desire of a register of deeds to maintain inviolate the law on succession and transmission of rights over real properties does not give him a right to refuse the registration of a deed.

It is not the aggrieved party alone that can, therefore, go to the Commissioner of Land Registration. The Court stated that whether a document is valid or not is for the courts to determine and not for the register of deeds.[192] The Court pointed out the proper procedure — when confronted with such a problem, the Registrar must submit and certify the question to the Commissioner, who shall enter an order prescribing the step to be taken on the doubtful question.

C. *Provincial Board of Assessment Appeals*

In *Victorias Milling Co. v. Court of Tax Appeals*,[193] the provincial assessor of Negros Occidental assessed machineries of Victorias Milling at ₱4,012,180.00 allowing a fifty percent deduction for depreciation.

Victorias filed a complaint with the Court of First Instance alleging error in the method of depreciation. Under section 17 of the Assessment Law, where the assessment is erroneous, appeal should be to the Provincial Board of Assessment Appeals and not to the courts. It is when the assessment is illegal and void that appeal may be brought to the courts. In this case, the Court held it was error and not illegality. An assessment becomes illegal and void if the assessor had no authority or jurisdiction. In this case, he had jurisdiction.

The Supreme Court stated that the Provincial Board of Assessment Appeals had jurisdiction over the dispute on assessment to the exclusion of the Court of First Instance under the doctrine of primacy of administrative remedy. The provincial assessor had the power to make assessments under section 7 of the Assessment Law and, in fact, Victorias never disputed this authority. The Court stated that if the assessor deviated from the procedure laid down by the law and employed the "fixed percentage of diminishing book value method" instead of the "straight line method" in depreciating machineries, the remedy of Victorias is not to file a complaint before the Court of First Instance but to appeal to the Provincial Board of Assessment Appeals.

D. *Appeal to the Secretary of Justice*

In *Go Kiong Ochura v. Commissioner of Immigration*,[194] another ground given by the Supreme Court in reversing the decision of the

[192] Citing In re Consulta of Cabantog, 67 Phil. 222 (1939); Smith Bell and Co. v. Register of Deeds of Davao, 96 Phil. 53 (1954); and other cases.
[193] *Supra*, note 146.
[194] *Supra*, note 178.

lower court was failure to exhaust administrative remedies. It ruled that the petitioners' failure to appeal a decision of the Commissioner of Immigration to the Secretary of Justice violated the rule on exhaustion of administrative remedies. The actions for prohibition and mandamus against the respondents will not lie.

VII. LIABILITY OF ADMINISTRATIVE AGENCIES

The liability of administrative bodies is governed by the many principles and distinctions under the general topic of government immunity from suit. For instance, the type of administrative body and the nature of its functions are material. The distinction between agencies performing primarily proprietary functions and those engaged in governmental activities has never been easily ascertained. An agency that is proprietary for purposes of labor law may be governmental insofar as immunity from suit is concerned.[195]

In *Republic of the Philippines v. Palacio*,[196] the government questioned a decision of the Court of Appeals which would have allowed execution on trust funds of the Irrigation Service Unit. One of the respondents (Ortiz) brought action against the Handong Irrigation Association and the Irrigation Service Unit to recover his land and damages for illegal occupation.

May the Irrigation Service Unit be sued? May the pump irrigation trust funds in its custody be garnished to satisfy a money judgment? The Supreme Court overruled the Court of Appeals and answered in the negative. It stated that the Irrigation Service Unit is an office in the Government of the Republic of the Philippines created to promote a specific governmental economic policy. The Unit's activity of selling irrigation pumps to farmers on installment basis is not primarily intended to earn profits or financial gain. The mere fact that interests are being collected on the balance of the unpaid cost of the purchased pumps does not convert this economic project of the government into a corporate activity.

The facts indicate that the liability of the Irrigation Service Unit arose from its having induced the Handong Irrigation Association to invade and occupy the land of Ortiz. Since the alleged liability arose from a tort and under the Civil Code,[197] the state is liable only when it acts through a special agent in such cases, the application for certiorari was granted.

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[195] See Cortes, *Political Law — Part I* in 1967 SURVEY OF PHILIPPINE LAW AND JURISPRUDENCE, p. 69 for the many 1967 cases repeating the rule in Mobil Philippines v. Customs Arrastre Service, G.R. No. 23139, December 17, 1966 and compare these cases with rulings allowing employees of the same office to strike.

[196] G.R. No. 20322, May 29, 1968.

[197] CIVIL CODE, art. 2180.